PROVINCE OF NEWFOUNDLAND

Report of
The Commission of Enquiry
on Pensions

March, 1990

91-05529/

FOREWARD

This document contains the Report of the Commission of Enquiry On Pensions, which was established under The Public Enquiries Act in 1989 to review all aspects of the four pension plans covering public servants, teachers, uniformed services personnel, and Members of the House of Assembly.

This Report has two sections, the first of which is a separate submission from the Chairman of the Commission outlining his recommendations on all issues including some in which he differs from the views of the other Commissioners. The second section contains the Report prepared by the two Commissioners and their recommendations on all matters required by the Terms Of Reference.

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Personnel Policy Division, Treasury Board

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Newfoundland and Labrador

COMMISSION OF ENQUIRY ON PENSIONS

ESTABLISHED UNDER THE PUBLIC ENQUIRIES ACT

George M. Cummins, M.B.A., LL.B., Chairman
David W. Earle, C.A., Commissioner
Michael F. Power, C.A., Commissioner

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TO HIS HONOUR THE LIEUTENANT-GOVERNOR IN COUNCIL

May it please Your Honour,

In response to the Commission dated 31 August 1989, I present my report.

I have the honour to be, Sir,

Your Obedient Servant

George M. Cummins
Chairman
March 1990

REPORT OF THE CHAIRMAN
OF
THE COMMISSION OF ENQUIRY ON PENSIONS

MARCH 1990

VOLUME I

VOLUME I

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2.0 Comments on Recommendations

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3.0 Members of the House of Assembly Retiring Allowance

- 3.1 Introduction
- 3.2 Commission on Remuneration to Members of the House of Assembly
- 3.3 1966 Royal Commission on Pensions

1.0 BACKGROUND

The Commission of Enquiry on Pensions was officially appointed under the Public Enquiries Act. Subsequent to the commencement of the work of the Commission, one Commissioner, Mr. F.D.R. Woolgar, F.C.A., resigned due to a potential conflict of interest. Mr. Woolgar's experience and expertise, having been a member of the 1966 Royal Commission on Pensions, was a loss. Mr. Michael F. Power, C.A., was pressed into service as a result of the resignation.

It is perhaps noteworthy that, notwithstanding such unforeseen difficulties, as well as the considerable travel involved, the Commission's work was still completed within the original budget allocated to the Commission.

In order to complete the work of the Commission on a timely and cost-effective basis, it became necessary for us to go our separate ways in order for me to fulfil my "other commitments" for the Commission, including the research necessary and appropriate for the arrangements discussed in this report. To call the Commission back together after the report of Messrs. Earle and Power had already been prepared, a copy of which was provided to me on 17 January 1990, would have resulted in additional unnecessary time and expense when government resources are already strained. Accordingly, I have taken it upon myself to prepare this separate report in order to save time and expense.

As Chairman of the Commission, I felt it was imperative, and incumbent upon me, to consult with Canada's recognized authorities on pensions and related economic and financial issues. In this regard, I was indeed fortunate to be given ready access to, and a warm and willing reception from, many of Canada's leading experts in the area. Although this necessitated extensive travel on my part, the wealth of information and valuable insights gained therefrom more than compensated for the time and the travel expenses involved. Many individuals across the country gave freely of their time and knowledge, to the ultimate benefit of the Province of Newfoundland.

The importance of my meetings with these individuals cannot be overestimated; consequently, I wish to acknowledge their invaluable contributions to the Commission, and to the Province, and to express my deepest appreciation to them:

Mr. Stanley Archdekin
President
CT Investment Counsel Inc.
Toronto

Messrs. James Baillie, John Laskin, Larry Taman and John Unger
Tory, Tory, DesLauriers & Binnington
Toronto

Ms. Kathy Bouey
Director, Intergovernmental Finance
Government of Ontario
Toronto

Mr. Claude Bruneau
Formerly President and Chief Executive Officer
The Imperial Life Assurance Company of Canada
Montreal

Mr. John Cook
Superannuation Commissioner
Victoria

Messrs. Maurice Coombs and Ian McSweeney
Osler, Hoskin & Harcourt
Toronto

Mr. Michael Costello
Assistant Deputy Minister
Ministry of Finance and Corporate Relations
Victoria

Mr. Purdy Crawford
Chairman, President and Chief Executive Officer
Imasco Limited
Montreal

Mr. Robert Hawkes, Q.C.
Superintendent of Pensions
Pension Commission of Ontario
Toronto

Ms. Priscilla Healey
Director, Secretariat
Pension Commission of Ontario
Toronto

Mr. Keith Horner
Chief, Social Tax/Transfer
Department of Finance Canada
Ottawa

Mr. John Howard
Vice-President and General Counsel
MacMillan Bloedel
Vancouver
(Formerly Assistant Deputy Minister, Corporate Affairs
Department of Consumer and Corporate Affairs
Ottawa)

Mr. Garth Jestley
President
Middlefield Ventures Limited
Toronto

Mr. Harvey Lazar
Deputy Chairman
Economic Council of Canada
Ottawa

Messrs. Michel Nadeau and Robert Auger
Caisse de Depot et Placement de Quebec
Montreal

M. Michel Sanschagrin
Government of Quebec
Quebec City

Mr. Doug Wannamaker
Vice-President, Pension Trust
Canada Trust
Toronto

Mr. Hans Winther
President
Middlefield Realty Services Ltd.
Toronto

In addition, I was accompanied by Mr. Earle and/or Mr. Power to meetings with the following:

Mr. John Abbott
Corporate Finance
Burns Fry Limited
Toronto

Mr. Robert Jack
Secretary
Nova Scotia Teachers' Pension Commission
Halifax

Mr. Donald Landreville
Vice-President, Marketing
Laurentien Investment Management (Canada) Inc.
Toronto

Mr. James MacDonald
Manager of Research
Burns Fry Limited
Toronto

Ms. Helene Pouliot
Consulting Actuary
Coopers & Lybrand
Toronto

Mr. Peter Rusheleau
Government Services
Burns Fry Limited
Toronto

Mr. John Smith
Vice-President, Pension Investment Services
The Great-West Life Assurance Company
Winnipeg

Mr. David Wright
Vice-President, Finance, and Chief Actuary
The Imperial Life Assurance Company of Canada
Toronto

The Commission was also well served by many, many members of the civil service of the Province of Newfoundland, and those people who made submissions to the Commission. While the number of such contributors obviates the possibility of mentioning them individually, I wish to acknowledge their valuable contributions, and to express my appreciation for their assistance.

Other members of the staff deserve special mention. Mr. Sam Dealhoy provided security, operated our equipment during the submissions, and generally managed the office while I was away performing my "other commitments". Ms. Judith Rowe typed the draft of this report, and many other documents for the Commission.

Section 2.0 of my report deals solely with the Recommendations in 2.00 of the report of Messrs. Earle and Power, while Section 3.0 deals with the Members of the House of Assembly Retiring Allowance.

2.0 COMMENTS ON RECOMMENDATIONS

Without getting into the detail of the report of Messrs. Earle and Power, the Executive Summary (Part 2.00 of their report) is a convenient and expedient way of dealing with the Recommendations put forward by Mr. Earle and Mr. Power.

2.1 PENSION BENEFITS

Under the heading of 2.01 Pension Benefits, the following recommendations have been made:

RECOMMENDATIONS

1. All future pension and ancillary benefits for all provincial employees should be determined on the basis of the Public Service Plan. If different retirement provisions are required for any group of employees, any increased cost for these benefits should be financed by shared employee/employer contributions.
2. The following items of the National Pension Reform Consensus should be implemented, providing appropriate steps are taken to finance any increased cost:
   - (i) vesting and locking in after 5 years; reducing to two years in the future;
   - (ii) pension credits to be divisible on marriage breakdown; and,
   - (iii) increased disclosure.
3. Redundancy pensions should be eliminated.
4. All purchase of service provisions should be eliminated unless the purchases are financed at levels approximating the actuarial cost of the pension benefits resulting from the purchased service.
5. Consideration should be given to removing Disability Pensions from the Provincial Pension Plans in favour of a universal insured longterm disability plan for all provincial employees, subject to any budgetary considerations. Such a plan would better meet the needs of both the employees and the Province.

I concur with these recommendations, subject to my later comments concerning the Members of the House of Assembly Retiring Allowance. However, I would add that there has been some difficulty in other jurisdictions when there are two statutes dealing with the provision of pension credits on marriage breakdown. This is pointed out in Ontario in the paper by D.S. Rudd, attached hereto as Appendix A, entitled "Pensions and Family Law". If it is decided to proceed with the division of pension credits on marriage breakdown, I have attached hereto, as Appendix B, a copy of an article by E. Diane Pask entitled "Drafting Pension Division Legislation: An Overview Of Selected Issues" for the assistance of the person drafting the legislation.

An example of a mandatory longterm disability plan for employees in British Columbia is found in Appendix C.

2.2 CONTRIBUTION RATES

Under the heading of 2.02 Contribution Rates, the following recommendations were made:

RECOMMENDATIONS

1. Recognizing that the Commission is recommending the Public Service Pension Plan for all employees, the Commission believes that shared contributions should be brought up to the level required to meet the cost of benefits accruing under the Plan. Based on the actuarial reports, this would mean that average shared contributions should be increased to approximately 10 percent of payroll

2. In the event it is felt desirable to have different retirement conditions for certain groups of employees, the contribution in 1. above should be adjusted to reflect any changed costs.

I concur with these recommendations, subject to my later comments concerning the Members of the House of Assembly Retiring Allowance. The sharing of the current service costs is imperative, particularly when one considers that 67 percent of working Newfoundlanders (based on a 1987 estimate of 240,000 working Newfoundlanders) have no pension plan. This 67 percent are left to their own devices to accumulate private savings for their retirements, tax-assisted or otherwise.

The report concludes "that employee contributions could be increased 0.5 percent to 1 percent of payroll and still compare favourably to similar plans in Canada". Based on the concept of matching contributions, if these increases were made, the government and taxpayers of this province will be required to contribute an additional $2.25 million to $4.5 million, based on an estimated current payroll of $450 million.

2.3 PAST SERVICE UNFUNDED LIABILITY

Under the heading of 2.03 Past Service Unfunded Liability, the following recommendations have been made:

RECOMMENDATIONS

1. The Province should adopt a 50 percent funding target for Provincial Pension Plans, to be achieved gradually over the next 20 years.
2. The Province should make an annual special payment of not less than 5 percent of the combined payroll of the Teachers' Pension Plan, the Uniformed Service Pension Plan and the Members of the House of Assembly (Retiring Allowances) Plan to the Pooled Pension Fund for the next 20 years.
3. The contribution level in 2. above should be reviewed at least every five years in light of the most recent actuarial valuations of the Plan.

If the recommendation concerning the government contribution of 5 percent is followed, the cost would be $22.5 million this year, and at least this amount for every year for the next 20 years. The terms of reference of the Commission of Enquiry on Pensions required the Commission to consider "the Province's financial capability" in determining "the amount of periodic special payments, if any, which can be reasonably expected to meeting this 20 year funding target".

There are three potential sources for these $22.5 million annual payments for 20 years. Firstly, the government could increase taxes, but Messrs. Earle and Power are "of the view that little, if any, additional burden can be placed on taxpayers of the Province", so this option is ruled out. Secondly, the government could take the funds from other programs to pay the annual payments of $22.5 million. At a time when funds are needed to stimulate economic growth and the problems in the fishery and elsewhere, this does not appear to be a viable alternative. Thirdly, the government could borrow the additional $22.5 million a year annual amount. However, if the additional funds were borrowed, this would be shifting the burden of paying these amounts onto our children and grandchildren.

With these problems as background, I will return to the question of the unfunded liability in subsection 2.6 when dealing with the Investment Program, where I propose a method of reducing such payments.

2.4 PURCHASE OF UNWORKED SERVICE AND OTHER PURCHASE OPTIONS

Under the heading 2.04 Purchase of Unworked Service and Other Service Options, the following recommendation has been made:

RECOMMENDATION

1. Purchase of non-worked service provisions should be eliminated from all Provincial Pension Plans.

I concur with this recommendation.

2.5 INDEXATION

Under the heading 2.05 Indexation of Pension in Payment, the following recommendations have been made:

RECOMMENDATIONS

1. The Province should not consider a program of formal indexation with Provincial guarantees at least until the funding target is achieved for basic benefits.

2. The current practice of charging "ad hoc" increases to the Pooled Pension Fund should be discontinued. If it is felt desirable to continue this practice, the full actuarial costs of this should be accounted for separately.

From a strictly economic perspective, I must concur with these recommendations. However, if the various groups come to the point where the employees are paying 50 percent of the cost of the basic pension benefits, which will put a stop to the growth of the unfunded liability, the Province should do its utmost to find a way to index the pensions at least up to the level of $10,000, exclusive of the Old Age Security and Canada Pension. If indexing is not done and inflation continues, the living standards of retirees will be eroded over time.

2.6 INVESTMENT PROGRAM

The report under the heading 2.06 Investment Program makes no recommendations for change in this area.

The submission of the Pension Investment Committee to the Commission showed that the annual return, over the past four years, on the Foreign Stocks was 5.4 percentage points higher than the return on Canadian Stocks. A report prepared by the Ministry of Finance and Corporate Relations, Province of British Columbia, entitled "Backgrounder: Investment Diversification", a copy of which is found in Appendix D, also looked at the returns of various indexes over a ten-year period. The British Columbia report shows that, over a ten-year period, the Foreign Stock (EAFE) Index outperformed the Toronto Stock Exchange 300 Index by 5.3 percentage points. While the past is no guarantee of future performance, there does not appear to be much indication that Canada will outperform the rest of the world in economic performance. As well, the Province of British Columbia has (with the assistance of Frank Russell Limited, which is also adviser to the Province of Newfoundland) identified the Fleming Canada Partners of Vancouver (which is associated with the Jardine Matheson conglomerate based in Hong Kong) as a firm which has a good first quartile record in the international field. A good manager or good managers may well be able to add more value.

The assets in the fund of the Province at present are $463.3 million, which is the figure used in the report of Messrs. Earle and Power. If an additional 5 percent could be earned on an additional 40 percent of the total assets of $463.3 million amount (and that is entirely possible based on the outperformance of the Foreign Stock component over the Canadian Stock component of our fund of 5.4 percent), this could add an additional $10.5 million annually to the fund. If, through the judicious selection of first quartile managers, this could be improved to 6 percent, the annual addition to the fund would be $12.6 million.

Assuming an additional 6 percent per year over the long term, this would mean that the 50 percent funding target of the present unfunded liability of $2.1 billion could be achieved in approximately 36 years. This time frame would appear appropriate for Newfoundland, considering that Ontario, with all its resources, is aiming to cover its total unfunded liability over 40 years.

The 50 percent funding target over 36 years ignores the probability of earning income on the annual increase of $12.6 million. It also ignores the probability that a first quartile manager could increase the additional return above the 6 percent figure used. A first quartile manager, coupled with the probability of earning income on the annual increase of $12.6 million, could reduce the 36 years considerably.

Increasing the foreign property component to accomplish this could be accommodated by two legislative changes which could constitutionally immunize the fund. The two changes required which would make the total assets, not just 50 percent, available for non-Canadian investment are to The Pensions Funding Act of Newfoundland. The two changes required are first, to provide specifically that the Minister of Finance is acting as agent of Her Majesty in right of Newfoundland in carrying out the Minister's responsibilities as trustee of the fund, and not as an agent of the House of Assembly, which appears to be the case under existing legislation. The second change required is to place ownership of the assets in the fund in the Province, so as to constitute the fund as property belonging to the Province. Contributions would be made to the Consolidated Revenue Fund, and pensions would be payable from the Consolidated Revenue Fund.

It could be argued that these amendments would violate the spirit of the Income Tax Act. However, it is usually considered that a person is entitled to arrange their affairs in the most expedient way, bearing in mind the scarce resources of the provincial government and that such changes would not ultimately result in less tax to the federal government. When one also takes into account the size of the unfunded liability, a fiscal agent is likely to view a step such as this positively, i.e. as the most productive use of the resources, albeit scarce, available. However, it is always easier to have the government put an additional $22.5 million a year (based on an estimated payroll of $450 million) into the fund than to follow such a course of action, since it does require changes.

It could also be argued that an increase in the foreign component would result in greater investment risk. However, many studies have concluded that greater diversification actually reduces risk.

Further, it could be argued that an increase in foreign exchange risks would result, and this is (at least partially) true in the short run. However, foreign exchange risk can be accommodated through hedging, and products have been developed to do just this, at reasonable cost.

2.7 OTHER

The report under the heading 2.07 Other Matters makes the following recommendations:

RECOMMENDATIONS

1. Benefit administration for all Plans should be centralized in the Pension Administration Division of the Department of Finance.

2. Pension Policy should be centralized either in Treasury Board or the Department of Finance. A final decision requires further analysis and should be completed internally by Cabinet.

3. Disclosure requirements as outlined in the National Pension Reform Consensus should be implemented.

4. Not less frequently than every five years, the investments of the Plans and financial conditions of the Plans should be communicated to employees. This would generally follow the actuarial reviews of the Plans.

5. Consideration should be given to the establishment of an Advisory Board consisting of representatives of employee groups, employer groups and pensioners. The responsibility of this Board would be advisory only.

6. Finally, in the event agreement cannot be reached with any employee group concerning the implementation of these recommendations, it is the opinion of the Commission that the Province should consider removal of the Provincial guarantee under the Pensions Funding Act for the employee group involved, or alternatively, establish a Money Purchase Pension Plan which will not involve future risks to taxpayers other than the defined contribution level. The maximum contribution level of the Province to the money purchase plan should be approximately 5 percent of payroll costs.

I concur with these recommendations, subject to my later comments with regard to the Members of the House of Assembly Retiring Allowance.

3.0 MEMBERS OF THE HOUSE OF ASSEMBLY RETIRING ALLOWANCE

3.1 INTRODUCTION

Members of the House of Assembly are unique when compared to public servants, teachers and uniform services. Members of the House of Assembly must expend considerable amounts of time, effort and money before they are elected. They are not compensated by government for the time, effort and expenditure made before they are elected.

Even after they are elected, they do not qualify for a retiring allowance until they are elected for a second term. It could occur that an MHA who is performing adequately, or perhaps even above average, is not re-elected due to a change in the mood of the electorate or the "time for a change" syndrome. On the other hand, it is unlikely that a public servant, teacher or a member of the uniform services would be dismissed in such circumstances.

It has also been alleged that, once a person becomes an MHA, their life is not their own. Commitments must be made and honoured outside what most of us would consider the normal working day. There is no such thing as an 8-hour day or 40-hour week for an MHA, particularly if the MHA is dedicated and committed.

Granted, when taken in isolation, the Members of the House of Assembly Retiring Allowance, the Teachers' Pension Plan and the Uniform Services Pension Plan are all generous. The Teachers' Pension Plan and the Uniform Services Pension Plan are not only generous, they are overly generous when compared with pension plans for similar professionals across Canada, which has been well demonstrated in the report of Messrs. Earle and Power, and that is one of the reasons that significant changes are required in those two plans. On the other hand, while the MHA Retiring Allowance is generous, Messrs. Earle and Power conclude "that the pension survivor benefits, termination benefits and the disability benefits of the ... Members of the House of Assembly (Retiring Allowances) Plan are in line with comparable benefits provided elsewhere in Canada".

Notwithstanding that fact, the MHA Retiring Allowance should be reviewed periodically, but since the position of an MHA is unique, a review of the MHA Retiring Allowance should be done by the proper authority, not by the Commission of Enquiry on Pensions.

3.2 COMMISSION ON REMUNERATION TO MEMBERS OF THE HOUSE OF ASSEMBLY

According to the Report of the Commission on Remuneration to Members of the House of Assembly, this body was appointed on 18 September 1989 and "ought to deal with the total remuneration of Members of the House, specifically the indemnity, all allowances, salaries and severance pay received by Members of the House of Assembly" (underlining added).

In the early stages of the work of the present Commission of Enquiry on Pensions, I was struck by the uniqueness of the arrangements for the Members of the House of Assembly. As I compared these arrangements with those for similar positions in other provinces and in the federal government, however, it became clear that the arrangements were comparable in other jurisdictions.

In Newfoundland, as in other jurisdictions, it is difficult to designate the arrangements for the Members of the House of Assembly as pension plans, in the traditional sense that the term is used. Indeed, as can be noted, the terminology itself is different. There is The Education Teachers' Pension Act, The Public Service (Pensions) Act and The Uniformed Services Pensions Act, all of which include the word "Pensions" in their titles, whereas The Members of the House of Assembly (Retiring Allowances) Act utilizes the words "Retiring Allowances" in the title. This difference in terminology evidences a fundamental difference between the arrangements for Members of the House of Assembly and the pension plans for teachers, uniform services and other members of the public service.

For the foregoing reasons, combined with other unique features alluded to in the Report of the Commission on Remuneration to Members of the House of Assembly, I am of the view that the Retiring Allowance, while comparable to arrangements in other Canadian jurisdictions, is not a traditional pension plan in the true sense in which that terminology is used.

Because the Retiring Allowance for Members of the House of Assembly is not a true pension plan, it should be properly considered elsewhere. In my view, it was, and is, part of the terms of reference and within the purview of the Commission on

Remuneration to Members of the House of Assembly. According to their own report, their report "ought to deal with ... all allowances ... received by Members of the House of Assembly". Accordingly, I recommend that the question of Retiring Allowances for Members of the House of Assembly be referred once again to the Commission on Remuneration to Members of the House of Assembly.

3.3 1966 ROYAL COMMISSION ON PENSIONS

The report of Messrs. Earle and Power, in section 3.05 Consideration of Equity, quotes at length from the 1966 Royal Commission on Pensions, apparently as support for their position that a Member of the House of Assembly should be treated exactly the same as public service employees, teachers and members of the uniform services. As mentioned previously, the position of an MHA is unique and this uniqueness is treated similarly, but not identically, across Canada. Secondly, it should be noted that the 1966 Royal Commission did not deal with MHA Retiring Allowances, despite the fact that, at that point in time, it was even called The Members of the House of Assembly Contributory Pension Plan Act, and their terms of reference included "the Newfoundland statutes governing pensions and gratuities as they relate to employees of the Newfoundland Government".

REPORT OF
THE COMMISSION OF ENQUIRY ON PENSIONS

DECEMBER 1989

VOLUME I

Newfoundland and Labrador

COMMISSION OF ENQUIRY ON PENSIONS

ESTABLISHED UNDER THE PUBLIC ENQUIRIES ACT

George M. Cummins, M.B.A., LL.B., Chairman
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TO HIS HONOUR
THE LIEUTENANT-GOVERNOR IN COUNCIL

May it please your Honour.

In response to the Commission dated 31 August 1989, we present our report. The Chairman has requested the following wording to be inserted:

> "Due to the pressure of other commitments, George Cummins, Chairman of the Commission, was unable to participate in the preparation of the final draft of the Report."

We have the honour to be, Sir, your obedient servants

D. W. Earle
David W. Earle, C.A.

Michael Power
Michael F. Power, B.Comm., C.A.

31 December 1989
St. John's, Newfoundland

REPORT OF

THE COMMISSION OF ENQUIRY ON PENSIONS

DECEMBER 1989

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INTRODUCTION

1.01 Background

1.02 Preamble - The Ability to Pay

1.03 Terms of Reference

SECTION 1.00

INTRODUCTION

1.01 BACKGROUND

This Commission was officially appointed under the Public Enquiries Act by document dated 31 August 1989, a copy of which is found in Appendix 10.01. Abbreviated Terms of Reference are found in section 1.03. The Commission was to complete its work and submit its report by 31 December 1989.

The major questions the Commission had to address may be summarized as follows:

A) Should taxpayers of the Province continue pension plans in their current form for Public Service Employees, Teachers, Members of the Uniformed Services and Members of the House of Assembly taking account of contemporary concepts of pension adequacy, of similar plans across Canada, of the National Pension Reform Consensus, and of the Tax Reform initiative with respect to Retirement Savings Plans?

B) Given the answers to A) above, how should the taxpayers of this Province best discharge their financial obligation to Provincial employees?

C) Will the present infrastructure in the Province provide taxpayers with the most cost effective solution in discharging their financial obligations to Provincial Pension Plans?

The Commission expresses its appreciation to all those who took the time and effort to make submissions. The Commission appreciates that some positions expressed in certain briefs may have resulted from a history of collective bargaining. As is well known, extreme positions are, at times, taken in the process of collective bargaining, although lesser positions may well be acceptable in the long run. Another factor which undoubtedly affected the positions taken in the submissions was concern for secrecy, i.e. reluctance to let the "other side" know what your real position is.

Much of the work of the Commission involved the collection of information. In this regard, contact was made with a number of individuals, the names of whom are found in Appendix 10.09, whose assistance proved invaluable. The names of individuals who were sworn in during public hearings are listed in Appendix 10.10. The public servants and other individuals who were contacted are too numerous to mention individually, but all were of great assistance to us in our work.

One of our staff deserves special mention, Ms. Maureen McCarthy, B.Comm.(Hons.), C.M.A., who performed much of our research.

Copies of the written submissions to the Commission comprise Volume II of the Report.

1.02 PREAMBLE - THE ABILITY TO PAY

As a preamble to the financial sections of this Report, the Commission believed it would be useful to the readers to have a general understanding of the Commission's views on the Cost of Provincial Pension Plans and the Province's Ability to Pay.

Cost of Provincial Pension Plans

The Province currently guarantees four major pension programs which will provide benefits to more than 36,000 active plan members. Since these plans have been in operation for a number of years, there are now pensioners receiving annual payments in excess of $60 million. The estimated value of the obligations to existing plan members as determined by the Actuary is in excess of $2.4 billion. By the year 2008, this amount is estimated to be in excess of $10.0 billion.

In common with other Public Sector Plan Sponsors, the Province has only recently started (1981) to set aside funds in a Pooled Pension Fund to pay for future benefits under its Pension Plans. To date, approximately $463.3 million has been accumulated in the Pooled Pension Fund. Each year these assets produce investment income which may be used to pay benefits or reinvested to provide for the payment of future benefits.

If we compare the value of assets, $463.3 million, to the value of obligations, $2,407.1 million, the Province now has set aside assets representing approximately 20% of its obligations. This compares unfavourably with other Public Sector Plan Sponsors in Canada who have on average now set aside assets representing 50% of their obligations.

Unlike other Public Sector Plan Sponsors, the Province has guaranteed payment of its pension benefits under The Pension Funding Act 1980. In accordance with this Act, the Province is required, as a minimum, to match employee contributions annually. These contributions are put into a Pooled Pension Fund. The balance of funds remaining in the Pooled Pension Fund after benefit payments are made is invested and set aside to pay for future benefits. In the event the accumulated funds, together with investment income, are inadequate to pay for current benefits, the Province is required to make a supplementary payment, referred to as a Deficiency Payment, to meet the costs of current benefits for each plan.

While numerous actuarial cost studies have been done for the Provincial Pension Plans, the true costs of the Flans will not be known until all the benefit and expense payments have been made, and all the investment income has been realized. Since employee contributions under Provincial Pension Plans are fixed, the following simplified formula represents what the taxpayers' costs for Provincial Pension Plans are likely to be:

Total Benefits and Expenses Paid
Less
Investment Income Earned
Less
Employee Contributions Received
the remainder being the
Taxpayer Cost of Provincial Pension Plans

From this formula, it can easily be determined that for a fixed level of benefits, the higher the investment income earned in the Pooled Pension Fund combined with employee contributions, will result in lower overall taxpayer costs.

Ability to Pay

The Commission is of the view that both the province's ability to pay and its taxpayers' ability to pay must be taken into account when reviewing the financing of Provincial Pension Plans.

Accordingly, the following observation should be noted.

On the Province's Ability

In this regard,

> "Revenue from own sources makes up less than 62 percent of the revenue of all Atlantic provinces and only 51.8 percent of all revenue in Newfoundland. In the other provinces, own source revenue accounts for over 80 percent of all revenue." 1

1 Source D.B. Perry, Canadian Tax Journal, May-June 1989, Vol. 37, No. 3, P. 823.

This means that almost 48 percent of Newfoundland government revenue comes from the federal government. However, it must be borne in mind that the amount of revenue from the federal government is not related to Newfoundland's expenditures. If Newfoundland spends more, the federal government does not give more. Therefore, if the Newfoundland government must spend more on pensions, the additional revenue will have to come from the taxpayers of Newfoundland. Accordingly, consideration must be given to the ability and willingness of the Newfoundland taxpayer to pay more.

On the Taxpayers' Ability

The basic rates of income tax and sales tax rates payable by the Newfoundland taxpayer as compared to the taxpayers of the other provinces are as follows:

BASIC PERSONAL INCOME TAX RATES
(AS A PERCENTAGE OF FEDERAL TAX RATES)
1989

Newfoundland	61% (62% in 1990)
Prince Edward Island	57%
Nova Scotia	56.5%
New Brunswick	60%
Quebec	16-24% of taxable income
Ontario	52%
Manitoba	52%
Saskatchewan	50%
Alberta	46.5%
British Columbia	51.5%

CORPORATE INCOME TAX RATES 1989

	Small Business	General Rate
Newfoundland	0/10	17
Prince Edward Island	10	15
Nova Scotia	0/10	15
New Brunswick	5/9	16
Quebec	0/3.36	6.16/14.56
Ontario	0/10	14.5/15.5
Manitoba	10	17
Saskatchewan	0/10	15
Alberta	0/5	9/15
British Columbia	9	14

RETAIL SALES TAX RATES 1989

Newfoundland	12%
Prince Edward Island	10%
Nova Scotia	10%
New Brunswick	11%
Quebec	9%
Ontario	8%
Manitoba	7%
Saskatchewan	7%
Alberta	0%
British Columbia	6%

In terms of basic income and sales tax rates, Newfoundland taxpayers pay some of the highest rates in Canada. How much more can the Newfoundland taxpayer afford to pay?

The Commission is of the view that little, if any, additional burden can be placed on taxpayers of the Province.

1.03 TERMS OF REFERENCE

The Commission was directed to review and comment on:

Pension Benefits

a) the adequacy of pension benefits available under all plans to ascertain if these benefits meet the objective of providing pensioners with a standard of living in retirement similar to that enjoyed while working.

b) the adequacy of benefits in comparison with other similar plans in Canada, including survivor benefits, medical and redundancy pensions, and the purchase of past service and contractual time.

c) the required changes to benefit programs resulting from the National Pension Reform Consensus as it impacts The Pension Benefits Act and Federal Pension Tax Reform Proposal.

Contribution Rates

d) the adequacy of the present level of contributions to meet the prescribed benefits.

e) the desirability of a contribution formula which is integrated with the Canada Pension Plan.

f) the contribution rates of other similar plans in Canada and compare these with the Government of Newfoundland and Labrador Pension Plan.

Past Service Unfunded Liability

g) various methods for the funding of the past service pension liability within budgetary limits acceptable to the

Province.

h) the percentage of the total pension actuarial liability which can reasonably be expected to be funded over the next 20 years given the Province's financial capability.

i) the amount of periodic special payments, if any, which can be reasonably expected to be paid by Government to meet this 20 year funding target.

Unworked Service

j) the policy of permitting plan members to purchase unworked service and the contribution rates at which such unworked service may be purchased.

Indexation of Pensions in Payment

k) the advantages or disadvantages of providing a formal indexation program to replace the existing annual "ad hoc" system.

l) the level of indexation benefits to be used in the indexation formula, if any, including the maximum or minimum limits in any given year.

m) the level of contribution and the cost-shared arrangements necessary to support this indexation program, if any.

n) the desirability of creating a separate indexation fund as compared to merging the indexation program, if any, with other benefits in each pension plan.

Investment Program

o) the adequacy of the present investment policy in meeting the needs of the present and future pension program including identifying other options, if any.

p) the advantages and disadvantages with respect to investing these pension funds in marketable securities, including the impact on contribution rates.

q) whether or not each plan's pension fund should be established separately or commingled; and whether or not such funds should continue to be at arm's length from Government, as the plan sponsor.

Other Matters

r) the present organizational relationships of the Teachers' Benefit Administration Division in the Department of Education, the Benefit Administration and Pension Policy Divisions in the Department of Finance, and the Personnel Policy Division of Treasury Board.

s) the proper participation of various employee representative groups in the overseeing and decision making process of their respective plans, including the nature and membership of any committees or boards, which may be recommended.

t) any other matters which, in the view of the Commission, are relevant in establishing a successful pension benefit and funding program.

u) bring conclusions and any recommendations which you consider desirable to improve the financial security of the Pension Plans and the present and future Pensioners.

EXECUTIVE SUMMARY

2.01 Pension Benefits

2.02 Contribution Rates

2.03 Past Service Unfunded Liability

2.04 Purchase of Unworked Service and Other Purchase Options

2.05 Indexation of Pension in Payment

2.06 Investment Program

2.07 Other Matters

SECTION 2.00

EXECUTIVE SUMMARY

THE COMMISSION'S CONCLUSIONS AND RECOMMENDATIONS ARE OUTLINED BELOW UNDER EACH SECTION OF ITS TERMS OF REFERENCE.

2.01 PENSION BENEFITS

(A) "To review and comment on:

> a) the adequacy of pension benefits available under all plans to ascertain if these benefits meet the objective of providing pensioners with a standard of living in retirement similar to that enjoyed while working."

Conclusions:

1. The Public Service Pension Plan, combined with other public pension benefits, generally replaces 100% of pre-retirement disposable income of long service employees at retirement. The Commission believes this level of benefit is adequate by most any standard. In the case of short service employees, the Public Service Pension Plan will meet this objective proportionately, with any shortfall being met by pension entitlements from previous employers or personal retirement plans.

2. The other Provincial Pension Plans, Teachers' Pension Plan, Uniformed Services Pension Plan and the Members of the House of Assembly (Retiring Allowances) Plan provide for a higher level of benefit accrual over a shorter projected period of service. In the case of the Teachers' Pension Plan, benefit accrual is 66 2/3% over 30 years, as compared to the Public Service Pension Plan where the benefit accrual for the same period is only 60%.

   The Commission is of the view that pension accruals in excess of those provided under the Public Service Pension Plan are unnecessary, since by most standards the latter level of benefit is more than adequate.

3. The Public Service Pension Plan provides for a reduction in benefit on receipt of Canada Pension Plan. Even after allowing for this, long service employees will generally be receiving close to 100% of their pre-retirement disposable income. The Commission concludes that this offset should be included in all Provincial Pension Plans.

4. The Commission concludes that, ideally, the Provincial Pension Plans should be formally indexed on some basis to allow retirees to maintain their standard of living through many years of retirement. The Commission is of the view that such a formal indexation plan should:

(i) be fully financed by employee/employer contributions and not subject to Provincial guarantees;

(ii) recognize that most pensioners receive other public pension benefits which are indexed for inflation with the annual amount of these pension benefits being generally in excess of $10,000 per year; and,

(iii) be implemented only after satisfactory financial arrangements have been put into place to finance the cost of current basic benefits.

(B) "To review and comment on:

> b) the adequacy of benefits in comparison with other similar plans in Canada, including survivor benefits, medical and redundancy pensions, and the purchase of past service and contractual time."

Conclusions

1. The Commission is of the view that the pension, survivor benefits, termination benefits, and the disability benefits of the Public Service Pension Plan and the Members of the House of Assembly (Retiring Allowances) Plan are in line with comparable benefits provided elsewhere in Canada.

2. The Commission is of the view that the pension, survivor benefits, termination benefits and the disability benefits of

the Teachers' Pension Plan and Uniformed Services Pension Plan are considerably in excess of benefits provided to those groups of employees elsewhere in Canada.

3. The purchase of service provisions, including contractual time and redundancy provisions, are considerably more generous than those available elsewhere to similar groups of employees.

(C) "To review and comment on:

> c) the required changes to benefit programs resulting from the National Pension Reform Consensus as it impacts The Pension Benefits Act, and Federal Pension Tax Reform Proposal."

Conclusions:

1. The Commission concludes that certain changes should be made to Provincial Pension Plans in accordance with the National Pension Reform Consensus, providing that appropriate steps are taken to finance these changes. The changes which should be considered concern:

    a) earlier vesting and locking in of pension benefits;
    b) splitting of pension credits on marriage breakdown; and,
    c) improved disclosure.

2. The Commission concludes that the existing provisions for survivor benefits are comparable to similar plans in Canada.

3. The Commission concludes that no material change would be required in the Public Service Pension Plan to conform to Federal Pension Tax Reform Proposal.

4. The Commission concludes that significant changes may be required in the Teachers' Pension Plan, Uniformed Services Pension Plan and the Members of the House of Assembly (Retiring Allowances) Plan to meet the Federal Pension Tax Reform Proposal. Since certain provisions of these plans may have to be altered to allow the plans to continue as registered pension plans, alternate arrangements may have to be established to provide excess benefits. Because these arrangements may not be as income tax effective, the cost of providing these benefits may be increased.

RECOMMENDATIONS

1. All future pension and ancillary benefits for all provincial employees should be determined on the basis of the Public Service Pension Plan. If different retirement provisions are required for any group of employees, any increased cost for these benefits should be financed by shared employee/employer contributions.

2. The following items of the National Pension Reform Consensus should be implemented providing appropriate steps are taken to finance any increased cost:
    - i) vesting and locking in after 5 years; reducing to two years in the future;
    - ii) pension credits to be divisible on marriage breakdown; and,
    - iii) increased disclosure.

3. Redundancy pensions should be eliminated.

4. All purchase of service provisions should be eliminated unless the purchases are financed at levels approximating the actuarial cost of the pension benefits resulting from the purchased service.

5. Consideration should be given to removing Disability Pensions from the Provincial Pension Plans in favour of a universal insured long-term disability plan for all provincial employees subject to any budgetary considerations. Such a plan would better meet the needs of both the employees and the Province.

2.02 CONTRIBUTION RATES

(A) "To review and comment on:

a) The adequacy of the present level of contributions to meet the prescribed benefits.

Conclusions:

1. On the basis of the actuarial studies combined annual employee/employer contributions to the Public Service Pension Plan are reasonably close to the cost of benefits accruing annually under these plans. In the case of the Teachers' Pension Plan, Uniformed Services Pension Plan and the Members of the House of Assembly (Retiring Allowances) Plan, there is a considerable shortfall between the value of benefits being earned under these plans annually and the combined employee/employer contributions.

2. In the view of the Commission, contribution increases required to meet the annual current costs under the Teachers' Pension Plan, Uniformed Services Pension Plan and the Members of the House of Assembly (Retiring Allowances) Plan would be unacceptable to both the employees and the taxpayers of the Province. The annual current costs of these plans would be reduced if pension benefits were made similar to the Public Service Pension Plan.

3. In the view of the Commission, current shared contributions must be raised to a level equal to the value of benefits accruing each year under the plans to avoid any further increases in the Unfunded Liability. If this action is not taken, the cost to taxpayers will increase because of the Provincial guarantee.

(B) "To review and comment on:

b) the desirability of a contribution formula which is integrated with the Canada Pension Plan."

Conclusion:

1. The prevalent practice across Canada is to provide for a contribution formula which is integrated with the Canada Pension Plan. No evidence was provided that would indicate that this formula should be altered.

(C) "To review and comment on:

c) the contribution rates of other similar plans in Canada and compare these with the Government of Newfoundland and Labrador Pension Plan."

Conclusion:

1. A comparison to similar plans across Canada reveals that Provincial employees contribute to their pension plans at a

lower level than employees elsewhere in Canada.

Since most other plans in Canada provide for formal indexation in some form, a direct comparison of employee contribution rates is difficult.

The Commission believes that employee contributions could be increased by .5% to 1% of payroll and still compare favourably to similar plans in Canada.

RECOMMENDATIONS

1. Recognizing that the Commission is recommending the Public Service Pension Plan for all employees, the Commission believes that shared contributions should be brought up to the level required to meet the cost of benefits accruing under the Plan. Based on the actuarial reports, this would mean that average shared contributions should be increased to approximately 10% of payroll.

2. In the event it is felt desirable to have different retirement conditions for certain groups of employees, the contribution level in 1. above should be adjusted to reflect any changed costs.

2.03 PAST SERVICE UNFUNDED LIABILITY

(A) "To review and comment on:

a) various methods for the funding of the past service pension liability within budgetary limits acceptable to the Province."

Conclusions:

1. On the basis of the actuarial reports submitted, the Unfunded Liability of the Provincial Pension Plans included in this enquiry amounts to $2.1 billion. The annual payment required to finance this over a period of 20 years is approximately $200 million. The Commission believes that such a level of additional contribution could not be accommodated within Provincial Budget constraints.

2. Evidence submitted indicates that the average level of funding for Public Service Pension Plans in Canada amounts to 50%. For most of these plans, this level of funding has been achieved gradually over a considerable period of time.

3. The Commission is of the view that any immediate action required to bring Provincial Pension Plans funding up to the level indicated in 2. above would be inappropriate. Based on evidence submitted the current funding levels of the Provincial Pension Plans are:

Public Service Pension Plan	30%
Teachers' Pension Plan	10%
Uniformed Services Pension Plan	Nil
Members of the House of Assembly (Retiring Allowances) Plan	Nil
All Plans Combined	20%

This level has been achieved in a period of 9 years since the coming into force of the Pensions Funding Act in 1980.

(B) "To review and comment on:

b) the percentage of the total pension actuarial liability which can reasonably be expected to be funded over the next 20 years given the Province's financial capability, and

c) the amount of periodic special payments, if any, which can be reasonably expected to be paid by Government to meet this 20 year funding target."

Conclusions:

1. The Commission believes the Province should aim for a funded ratio at the end of the next 20 years equal to 50% of the value of plan liabilities at that time. The Province will then be at approximately the same level as most Public Service Plans in Canada today.

2. Because of the Investment Policy in place, the Commission is of the view that the Pooled Pension Fund is likely to produce

real rates of return in excess of those being assumed by the actuary. These excess returns could provide considerable growth in the Pooled Pension Fund in the next 20 years.

3. Notwithstanding the high probability of excess returns over the next 20 years, the Commission believes that special annual payments of not less that 5% of the combined payroll of the Teachers' Pension Plan, the Uniformed Services Pension Plan and the Members of the House of Assembly (Retiring Allowances) Plan should be made to the Pooled Pension Fund by the Province to achieve the funding target.

RECOMMENDATIONS

1. The Province should adopt a 50% funding target for Provincial Pension Plans to be achieved gradually over the next 20 years.

2. The Province should make an annual special payment of not less than 5% of the combined payroll of the Teachers' Pension Plan, the Uniformed Services Pension Plan and the Members of the House of Assembly (Retiring Allowances) Plan to the Pooled Pension Fund for the next 20 years.

3. The contribution level in 2. above should be reviewed at least every 5 years in light of the most recent actuarial valuations of the Plan.

2.04 PURCHASE OF UNWORKED SERVICE AND OTHER PURCHASE OPTIONS

(A) "To review and comment on:

> a) the policy of permitting plan members to purchase unworked service and the contribution rates at which such unworked service may be purchased."

Conclusions:

1. The purchase of unworked service, at rates below the actuarial cost for the pension benefit related to such service, has led to increases in the unfunded liabilities of Provincial Pension Plans. In the view of the Commission, purchase of unworked service at rates less than the actuarial cost will lead to increased costs for taxpayers.

2. The Commission is of the view that certain purchase of service provisions were introduced in the Plans to attract and retain certain groups of employees in accordance with Provincial priorities at the time. These purchase of service provisions, such as purchase of university time for teachers,

have purchase rates and terms considerably below their actuarial cost.

3. With the exception of war service, the right to purchase non-worked service on favourable purchase terms does not exist in other Public Sector Plans.

4. Tax Reform may require elimination of purchase of service provisions in Provincial Pension Plans.

RECOMMENDATION

1. Purchase of non-worked service provisions should be eliminated from all Provincial Pension Plans.

2.05 INDEXATION OF PENSION IN PAYMENT

(A) "To review and comment on:

- a) the advantages or disadvantages of providing a formal indexation program to replace the existing annual "ad hoc" system;
- b) the level of indexation benefits to be used in the indexation formula, if any, including the maximum or minimum limits in any given year;
- c) the level of contribution and the cost-shared arrangements necessary to support this indexation program, if any; and,

> d) the desirability of creating a separate indexation fund as compared to merging the indexation program, if any, with other benefits in each pension plan."

Conclusions:

1. The Commission is of the opinion that the cost of any formal indexed plan would be prohibitive. In accordance with the most recent actuarial reports, the unfunded liability of the Plans would be increased to $3.2 billion. In addition, to fully index benefits accruing under the plan, annual costs would increase by in excess of 50%. In the view of the Commission, implementation of any such plan should be deferred until appropriate action has been taken to meet the financial requirements of the basic benefits under Provincial Pension Plans.

2. The current process of "ad hoc" indexing has led to increases in the Unfunded Liability. Because of the Province's guarantees, this will ultimately lead to increased costs for taxpayers.

3. Under the current practice of "ad hoc" indexing, employees do not contribute to the cost of this valuable benefit. This is contrary to the practice in formally indexed plans where the costs are generally shared equally by the employer and the employee.

RECOMMENDATIONS

1. The Province should not consider a program of formal indexation with Provincial guarantees at least until the funding target is achieved for basic benefits.

2. The current practice of charging "ad hoc" increases to the Pooled Pension Fund should be discontinued. If it is felt desirable to continue this practice, the full actuarial costs of this should be accounted for separately.

2.06 INVESTMENT PROGRAM

(A) "To review and comment on:

a) the adequacy of the present investment policy in meeting the needs of the present and future pension program including identifying other options, if any."

Conclusions:

1. In the opinion of the Commission, the Province, acting through the Minister of Finance and the Pension Investment Committee, has put into place an Investment Policy, Investment Managers and controls which will serve as a model to other Public Service Plan sponsors elsewhere in Canada.

The Investment Policy should lead to long-term real rates of return in excess of those assumed in the actuarial reports.

2. The Commission believes that no significant changes are required in the Investment Program now and for the foreseeable future.

(B) "To review and comment on:

b) the advantages and disadvantages with respect to investing these pension funds in marketable securities, including the impact on contribution rates."

Conclusions:

1. Based on an analysis of past investment results, the Commission is of the opinion that marketable securities will produce greater investment returns than non-marketable securities. These higher returns will reduce taxpayer costs in the long term.

(C) "To review and comment on:

c) whether or not each plan's pension fund should be established separately or commingled; and whether or not such funds should continue to be at arm's length from Government, as the plan sponsor."

Conclusions:

1. Because the Provincial guarantee applies to all pension funds, the Commission believes that there are no material advantages to keeping each pension plan fund separate. Administrative expenses may decrease if the plan funds are combined into one fund with the continuation of the Provincial guarantee.

2. The combining of the funds would actually lead to a reduction in the current provincial cost of the plans (by eliminating deficiency payments now required on certain plans). In the view of the Commission, the requirement of an annual special payment considerably in excess of the amount of any reduction will best meet the long-term interests of the Province and the members of the Provincial Pension Plans.

RECOMMENDATIONS

1. The Investment Program currently in place should not be altered except to adapt to changed circumstances or changed management requirements.

2. Investments of the Pooled Pension Fund should continue to be restricted to marketable securities.

3. The pension funds should be combined into one fund which would continue to enjoy the Provincial guarantee as outlined in The Pension Funding Act.

2.07 OTHER MATTERS

(A) "To review and comment on:

> a) the present organizational relationships of the Teachers' Benefit Administration Division in the Department of Education, the Benefit Administration and Pension Policy Divisions in the Department of Finance, and the Personnel Policy Division of Treasury Board."

Conclusions:

1. The Commission believes that administration of all plans should be handled centrally in the Pension Benefits Administration Division of the Department of Finance. This should lead to certain administrative savings and a concentration of expertise.

2. Because of the long-term cost implications for the Province, the Commission believes that responsibility for pension policy, including negotiations of pensions with employee groups, should be centralized either in Treasury Board or the Department of Finance. This is an internal matter that should be further studied before a final decision is made.

3. The Commission is of the view that the current practice of charging administrative costs to the plan should be continued.

(B) "To review and comment on:

b) the proper participation of various employee representative groups in the overseeing and decision making process of their respective plans, including the nature and membership of any committees or boards, which may be recommended."

Conclusions:

1. The Commission is of the view that certain initiatives with respect to communicating benefit entitlement on Provincial Pension Plans are well under way.

2. Communication to employees concerning the investments of the plans and financial conditions of the plans has not been addressed. The Commission is of the opinion that this lack of information has led to difficult dealings with certain employee groups.

3. Based on the evidence submitted, no other Boards should be required for the successful operation of the Plans. In order to facilitate transfer of information to plan members, consideration could be given to the establishment of an Advisory Board.

(C) "To review and comment on:

> c) any other matters which in the view of the Commission, are relevant in establishing a successful pension benefit and funding program.

Conclusions:

1. The Commission concludes that a pension benefit program and funding for that program would best be met by a single plan with equitable benefits for all. The Public Service Pension Plan provides a level of pension benefits that is comparable to plans in other Provinces for public servants, teachers and uniformed services, at reasonable cost to both the plan sponsor and to the employee.

2. The Commission concludes that the Members of the House of Assembly (Retiring Allowances) Plan is comparable to other legislative assemblies. We further conclude that this special plan for a small group detracts from the concept of equity for all.

3. Certain exgratia pension arrangements of the Province, such as those which resulted from the Hartt arbitration award should be thoroughly reviewed and subjected to the same financial requirements as other Provincial Pension Plans.

RECOMMENDATIONS

1. Benefit administration for all Plans should be centralized in the Pension Administration Division of the Department of Finance.

2. Pension Policy should be centralized either in Treasury Board or the Department of Finance. A final decision requires further analysis and should be completed internally by Cabinet.

3. Disclosure requirements as outlined in the National Pension Reform Consensus should be implemented.

4. Not less frequently than every 5 years, the investments of the Plans and financial conditions of the Plans should be communicated to employees. This would generally follow the actuarial reviews of the Plans.

5. Consideration should be given to the establishment of an Advisory Board consisting of representatives of employee groups, employer groups and pensioners. The responsibility of this Board would be advisory only.

6. Finally, in the event agreement cannot be reached with any employee group concerning the implementation of these

recommendations, it is the opinion of the Commission that the Province should consider removal of the Provincial guarantee under The Pensions Funding Act for the employee group involved, or alternatively, establish a Money Purchase Pension Plan which will not involve future risks to taxpayers other than the defined contribution level. The maximum contribution level of the Province to the money purchase plan should be approximately 5% of payroll costs.

PENSION BENEFITS

3.01 The Adequacy of Pension Benefits

3.02 Comparison with Similar Plans in Canada

3.03 National Pension Reform Consensus

3.04 Federal Pension Tax Reform Proposal

3.05 Consideration of Equity

Section 3.00

PENSION BENEFITS

3.01 THE ADEQUACY OF PENSION BENEFITS

The Random House Dictionary of the English Language defines adequate as follows:

> "as much or as good as necessary for some requirement or purpose; fully sufficient, suitable or fit"

In the case of the Provincial Pension Plans, the yardstick for determining adequacy must rest on the ability of each plan to replace employment income which will be lost on retirement. The following table indicates the levels of gross pension income produced by these plans for long service employees.

Plan	Maximum Pension Earned In	Percentage of Pension Salary Base	Pension-Salary Base
PSPP	35 Years	70%	Average last 5 years
TPP	30 Years	66 2/3%	Average best 5 years of last 7 years
MHAPP	17 Years	75%	Average best 3 years
USPP			
Non Officer*	25 Years	60%	Final rate of pay
Officer	30 Years	75%	Final rate of pay

* A lower rate may apply to Royal Newfoundland Constabulary members as a result of the most recent arbitration award.

For employees retiring with less service than indicated, pensions would be reduced proportionately; however, this should be compensated for by pensions accumulated from prior employment and private retirement or non-retirement savings.

Pension Planners suggest it is necessary to take one further step in measuring the degree to which a particular pension plan replaces employment income on retirement. This supplementary step recognizes that there are certain changes which occur on retirement which should be accounted for. These may be briefly summarized as follows:

- contributions to employee benefit plans are usually eliminated;
- contributions to Canada Pension Plan and Unemployment Insurance are eliminated;
- benefits may be received under Canada Pension Plan and Old Age Security;
- work related expenses are eliminated;
- the need for retirement savings should be reduced; and,
- income tax changes.

In determining the adequacy of a particular pension plan, the following items are compared:

a) employees' take-home-pay immediately prior to retirement, and

b) employees' disposable pension income immediately after retirement (pension less deductions at source).

A pension plan, in combination with other public pension plans which completely replaces pre-retirement take-home-pay, should be considered as adequate or perhaps more than adequate since it meets the definition "fully sufficient". A pension plan, in combination with other public pension plans which does not completely replace pre-retirement take-home-pay, may also be considered as adequate since it may be "as much or as good as necessary" recognizing that private savings should also be relied upon.

The Department of Finance Submission contained a table which compares pre-retirement take-home-pay to disposable pension income for sample employees in the Public Service Pension Plan. The table is shown here:

PUBLIC SERVICE PENSION PLAN
RETIREMENT AT AGE 65 IN 1989
WITH 35 YEARS OF PENSIONABLE SERVICE

	$	$	$
Pre-Retirement Earnings	25,000	35,000	50,000
PRE-RETIREMENT DEDUCTIONS			
Income Tax - Married	3,250	6,700	12,750
Pension Contribution	1,250	1,750	2,500
CPP Contribution	500	500	500
UIC Contribution	500	600	600
Benefit Contribution	400	500	800
Work Expenses	1,250	1,750	2,500
Total Deduction	7,150	11,800	19,650
Take-Home-Pay	17,850	23,200	30,350
POST RETIREMENT			
Public Service Pension	12,800	18,500	27,950
Canada Pension Plan	6,100	6,800	6,800
Old Age Security	3,900	3,900	3,900
Total Income	22,800	29,200	38,650
POST RETIREMENT DEDUCTIONS			
Income Tax	2,100	4,100	8,100
Benefits Contribution	200	300	400
Total Deduction	2,300	4,400	8,500
Take Home Pension	20,500	24,800	30,150

This table shows that, in most cases, Take Home Pension Income will exceed Pre-retirement Take Home Pay.

The Department of Education Submission also contained tables with similar comparisons for teachers. These are shown below:

TEACHERS' PENSION PLAN
RETIREE AT AGE 60 IN 1989
30 YEARS PENSIONABLE SERVICE
TAX BASE MARRIED WITH ONE DEPENDENT (spouse)

	$	$	$
Pre-Retirement Earnings	25,000	35,000	50,000
PRE-RETIREMENT DEDUCTIONS:			
Income Tax	3,000	6,700	12,750
Pension Contribution *	1,250	1,750	2,500
CPP Contribution	525	525	525
UIC Contribution	500	600	600
Benefit Contribution	500	600	750
Work Expenses	1,250	1,750	2,500
Total Deduction	7,025	11,925	19,625
TAKE-HOME-PAY	17,975	23,075	30,375
POST RETIREMENT (Age 60)			
Teachers' Pension	15,000	21,500	29,700
Canada Pension	4,300	4,700	4,700
Total Income	19,300	26,200	34,400
POST RETIREMENT DEDUCTIONS			
Income Tax	1,900	3,900	7,200
Benefit Contribution	200	350	500
Total Deductions	2,100	4,250	7,700
NET PENSION	17,200	21,950	26,700

* Based on 5% contribution rate.

It should also be noted that with the payment of Old Age Security benefits, post-retirement income will increase by approximately $4,000 at age 65. If this level of income is included, this table also shows that Take Home Pension Income will exceed Pre-retirement Take Home Pay.

While these tables contain some items of a subjective nature, the Commission is of the view that their inclusion is not material in determining the question of adequacy.

On the basis of these tables and other evidence, the Commission concludes as follows:

1. Most long service members of the Public Service Pension Plan will have pension income, including Canada Pension Plan and Old Age Security, which will continue their pre-retirement take-home-pay indefinitely.

2. For short service members of the Public Service Pension Plan, the proportionate reduction in pension should be compensated for by pension entitlements carried forward from previous employers or from private retirement savings or other savings.

Accordingly, the Commission is of the opinion that the Public Service Pension Plan is providing an adequate level of benefits which should enable pensioners to maintain their standard of living, at least initially.

In the case of the Teachers' Pension Plan, Uniformed Services Pension Plan and the Members of the House of Assembly (Retiring Allowances) Plan, a judgement as to the adequacy or inadequacy of benefits is made more difficult because members may be forced to retire many years before they become entitled to benefits under the Canada Pension Plan and Old Age Security.

The following factors should be taken into account:

(i) each of these plans provide for more generous benefit accruals over a shorter period of service than the Public Service Pension Plan;

(ii) employees retiring at young ages are much more likely to seek re-employment and generate further work related earnings; and,

(iii) human rights legislation may ultimately abolish mandatory retirement at ages below age 65 with the exception of Uniformed Services.

Taking these factors into account, the Commission is of the view that benefits provided under the Teachers' Pension Plan, the Uniformed Services Pension Plan and the Members of the House of Assembly (Retiring Allowances) Plan may be more than adequate to enable pensioners to maintain their standard of living, at least initially.

Ideally, a pension plan should provide for periodic pension increases related to increases in the Consumer Price Index. The purpose of these increases is to provide increased purchasing power to maintain the standard of living of pensioners. This practice, referred to as Indexing, is often a specific provision of a pension plan. In the case of the Provincial Pension Plans, no such provision exists and consequently, pensioners may, in the long term, see the purchasing power of their pensions decrease.

To date, this has been compensated for by annual exgratia increases in pensions, approximating the increase in the Consumer Price Index. The absence of a formal indexing provision in the Plans may lead to a reduction in the standard of living of pensioners.

3.02 COMPARISON WITH SIMILAR PLANS IN CANADA

In this section of the Report, the Commission highlights the results of its detailed comparisons of Provincial Pension Plans to other similar plans in Canada. The detailed comparisons are included in Appendices, Section 10.00.

While pension plans may contain numerous benefit provisions, the Commission has limited its detailed comparative analysis to those features of the Pension Plan which will most affect the value of the Pension Plan to the employees. These features may be summarized as follows:

a) Pension Payable on Retirement.
b) Pension Reduced by Canada Pension Plan
c) Earliest Service and/or Earliest Age when a Pension may be Payable without Reduction.
d) Indexation of Pension.
e) Termination of Service Benefits.
f) Death and Survivor Benefits.
g) Disability Benefits.
h) Redundancy Benefits.
i) Purchase of Service Provisions.

Comparative tables, together with detailed explanations, follow under appropriate heading.

Pension Payable at Retirement

The pension payable under most public sector plans is determined by multiplying an annual pension accrual factor by pensionable service and applying the resultant percentage to a pension salary base. In order to relate the pension provided to earnings being replaced at or near retirement, the pension salary base is normally defined as an annual average of the best or last 5 years earnings. The following tables show comparisons of the Provincial Formula to other similar plans in Canada.

TABLE A

Public Service Pension Plan

Province	Annual Benefit Accrual	Pension Salary Base	Maximum Pension Accrual	Pension Accrual After 25 Years	After 30 Years	After 35 Years
NFLD.	2%	Avg. last 60 months	70%	50%	60%	70%
P.E.I.	2%	Avg. best 3 years	70%	50%	60%	70%
N.S.	2%	Avg. last 60 months	70%	50%	60%	70%
N.B.	2%	Avg. best 5 years	70%	50%	60%	70%
QUE.	2%	Avg. best 5 cal. years	70%	50%	60%	70%
ONT.	2%	Avg. best 5 con. years	70%	50%	60%	70%
MAN.	2%	Avg. best 5 of 12 years	70%	50%	60%	70%
SASK.	2%	Avg. 5 years	70%	50%	60%	70%
ALTA.	2%	Avg. best 5 years	70%	50%	60%	70%
B.C.	2%	Avg. best 5 years	70%	50%	60%	70%

These benefit provisions are almost identical across the country.

TABLE B

Teachers' Pension Plan

Province	Annual Benefit Accrual	Pension Salary Base	Maximum Pension Accrual	Pension Accrual		
				After 25 Years	After 30 Years	After 35 Years
NFLD.	2.2%	Avg. last 5 years	66 2/3%	55%	66 3/3%	66 2/3%
P.E.I.	2%	Avg. best 5 years	70%	50%	60%	70%
N.S.	2%	Avg. best 5 years	70%	50%	60%	70%
N.B.	2%	Avg. best 5 con.yrs.	70%	50%	60%	70%
QUE.	2%	Avg. best 5 years	70%	50%	60%	70%
ONT.	2%	Avg. best 5 years	70%	50%	60%	70%
MAN.	2%	Avg. best 5 years	70%	50%	60%	70%
SASK.	2%	Avg. 5 years	70%	50%	60%	70%
ALTA.	2%	Avg. best 5 years	70%	50%	60%	70%
B.C.	2%	Avg. best 5 years	70%	50%	60%	70%

For periods of service up to 30 years, Newfoundland Teachers have a pension accrual rate which is at least 10% higher than elsewhere in Canada. The remaining Provinces have pension accrual rates equal to their Public Service Pension Plans.

TABLE C

Uniformed Services Pension Plan

Comparison	Annual Benefit Accrual	Pension Salary Base	Maximum Pension Accrual	Pension Accrual		
				After 25 Yrs	After 30 Yrs	After 35 Yrs
NFLD.	Yrs. 1-20 - 2% /yr 40% Yrs. 21-25 - 4% /yr 20% Yrs. 26-29 - 2% /yr 8% Year 30 - 7% Total: 75%	Annual rate of pay at retirement date.	Commissioned Officers - 75% Non-Commissioned Officers - 60%	60%	75%	75%
HALIFAX	2%	Avg. best 5 years	70%	50%	60%	70%
SAINT JOHN	2%	Avg. best 3 years	70%	50%	60%	70%
TORONTO	2%	Avg. best 60 months	70%	50%	60%	70%
WINNIPEG	2%	Avg. 5 years	70%	50%	60%	70%
CALGARY	2%	Avg. best 5 years	70%	50%	60%	70%
VANCOUVER	2%	Avg. best 5 years	70%	50%	60%	70%
RCMP	2%	Avg. best 6 years	70%	50%	60%	70%

From this table, it may be concluded that the Newfoundland Plan provides for benefit accrual rates during the first 25 years of service which are 20% higher than elsewhere in Canada and, significantly higher in the 30th year of service. With the exception of Newfoundland, accrual rates are equal to rates in the Public Service Plans across Canada.

TABLE D

Members of the House of Assembly Pension Plan

Comparison	Annual Benefit Accrual	Pension Salary Base	Maximum Pension Accrual	Pension Accrual After 25 Yrs	Pension Accrual After 30 Yrs	Pension Accrual After 35 Yrs
NFLD.	Years 1-10 - 5% /yr 50% Years 11-15 - 4% /yr 20% Years 16-17 - 2.5% /yr 5% Total: 75%	Average highest 3 years	75% (after 17 years)	75%	75%	75%
N.S.	5%	Avg. 3 years	75% (after 15 years)	75%	75%	75%
N.B.	4.5% Member 3% Minister	Avg. 3 years	N/A			
QUE.	3.5% (After 1987) Prev. 4%	Avg. 3 years	N/A			
ONT.	5%	Avg. best 36 months	75% (after 15 years)	75%	75%	75%
SASK.	Money Purchase Plan	Based upon annuity purchase value.	N/A	N/A	N/A	N/A
ALTA.	4%	Best 3 years	80% (after 20 years)	80%	80%	80%
B.C.	5%	Avg. best 4 years	80% (after 16 years)	80%	80%	80%
FEDERAL						
House Of Commons	5%	Avg. best 6 years	75% (after 15 years)	75%	75%	75%
Senators	3%	Avg. Sessional Indemnity	45% (after 15 years)	75%	75%	75%

The Provincial Plan is comparable to plans for legislative assemblies elsewhere in Canada.

In summary, these tables indicate that pension accrual rates and pensions at retirement under the Provincial Public Service Pension Plan and the Members of the House of Assembly (Retiring Allowances) Plan are comparable to those available on similar plans across Canada. In the case of the Provincial Teachers' Pension Plan and Uniformed Services Pension Plan, pension accrual rates and annual pensions, for most periods of pensionable service, are in excess of those for similar plans across Canada.

Pension Reduced by Canada Pension Plan

With the introduction of the Canada Pension Plan in the mid 1960's, most pension plans were modified to provide for a reduction in benefits for recipients of Canada Pension. These reductions were required to ensure that existing replacement ratios for pension plans were left unchanged. The reductions were generally designed to decrease pensions from the pension plan by an amount equal to the pension payable under the Canada Pension Plan. The full amount of the reduction was normally graded in over a period of 35 years. In the case of Provincial Pension Plans, only two plans were integrated, the Public Service Pension Plan and Uniformed Services Pension Plan. The calculation for determining the amount of reduction for these provincial pension plans is determined by the following formula:

.006 x Credited Service (After 1967) x CPP Salary Base

In this calculation, the CPP Salary Base will be the lesser of the Average Pensionable Salary or the 3 year average of the years maximum pensionable earnings under CPP.

The following tables indicate the practises that are followed by similar plans in Canada.

TABLE E

Public Service Pension Plan

Comparison	Integrated Yes/No	Integration Formula	Credited Service
NFLD.	Yes	.6% x Avg. 3 yrs. to YMPE	Service after April 1, 1967
P.E.I.	Yes	.7% x Avg. 3 yrs. to YMPE	Service since 1967
N.S.	Yes	.7% x Avg. 3 yrs. to YMPE	Service since 1966
N.B.	Yes	.7% x Avg. 3 yrs. to YMPE	Service since 1966
QUE.	Yes	.7% x Avg. 5 yrs. to YMPE	Service after Jan. 1966
ONT.	Yes	.7% x Avg. Salary to YMPE	Service since 1966
MAN.	Yes	.6% x Avg. YMPE	Service since 1966
SASK.	Yes	.7% x Avg. Salary to YMPE (previous plan)	Service since 1966
ALTA.	Yes	.7% x Avg. 5 yrs. to YMPE	Service after Jan. 1966
B.C.	Yes	.7% x Avg. Salary to YMPE	Service after 1966
FED. GOV'T	Yes	.7% x Avg. 3 yrs. to YMPE	Service since 1966

This table confirms that the practise of integration and the formula for integration of Public Service Pension Plans is comparable across Canada.

TABLE F

Teachers' Pension Plan

Province	Integrated (Yes or No)	Integration Formula	Credited Service
NFLD.	No		
P.E.I.	Yes	.7% x Avg. 5 yrs to YMPE	Service since 1966
N.S.	Yes	.7% x Avg. Salary to YMPE	Service since 1966
N.B.	Yes	.7% x Avg. Salary	Service since 1966
QUE.	Yes	.7% x Avg. to YMPE	Service since 1966
ONT.	Yes	.7% x Avg. Salary to YMPE	Service since 1966
MAN.	Yes	.6% x Avg. Salary to YMPE	Service since 1966
SASK.	Yes	.7% x Avg. Salary to YMPE	Service since 1966
ALTA.	Yes	.7% x Avg. Salary to YMPE	Service since 1966
B.C.	Yes	.7% x Avg. Salary to YMPE	Service since 1966

This table shows that the Provincial Teachers' Pension Plan is the only major Teachers' Pension Plan in Canada that is not integrated with the Canada Pension Plan. If this factor is combined with the higher pension accrual rate, this means that Teachers' Pensions are approximately 35% higher than elsewhere.

The practise of integration and the formula for integration for Teachers' Pension Plans across the country are similar or equal to their respective Public Service Pension Plans.

TABLE G

Uniformed Services Pension Plan

Comparison	Integrated (Yes or No)	Integration Formula	Credited Service
NFLD.	Yes	.6% x Avg. 3 yrs. to YMPE	Service after Apr. 1967
HALIFAX	Yes	19% of pension or CPP benefit	
SAINT JOHN	No		
ONTARIO	Yes	.7% x Avg. 3 yrs. to YMPE	Service since 1966
WINNIPEG	Yes	.6% x Avg. to YMPE	Service since 1966
CALGARY	Yes	.6% x Avg. 5 yrs. to YMPE	Service since 1966
VANCOUVER	Yes	.7% x Avg. Salary to YMPE	Service since 1966
RCMP	Yes	.7% x Avg. YMPE	Service since 1966

This table confirms that the practise of integration and the formula for integration are comparable across the country.

TABLE H

Members of the House of Assembly Pension Plan

Comparison	Integrated (Yes or No)
NFLD.	No
N.S.	No
N.B.	No
QUE.	No, since 01/01/88 Pre. 01/01/88 .7% CPP factor
ONT.	No
SASK.	No, Money Purchase Plan
ALTA.	No
B.C.	No
FEDERAL	No

The practise of non-integration is comparable to plans for legislative assemblies elsewhere in Canada.

These tables indicate, with the exception of the Provincial Teachers' Pension Plan, that Provincial practises of integration with the Canada Pension Plan are consistent with similar plans in Canada. Legislative Assemblies are not integrated.

Earliest Service and/or Earliest Age when a Pension may be Payable without Reduction

The following table indicates the earliest service and/or earliest age when a pension may be payable without any reduction in pension for Provincial Plans and comparable plans in Canada.

TABLE I

Early Retirement Provisions

Comparison	Public Service Plan	Teachers' Plan	Uniformed Services Plan	Members of the House of Assembly Plan
NFLD.	Age 55 with 30	Age 55 with 30 Any age with 30 worked	Commissioned: 30 years, not later than age 60 Non-Commissioned: 25 years, not later than age 55	Age + years equal 60 (55 for premier)
P.E.I.	Age 55 with 30	Age 55 with 30	Not available	Not available
N.S.	Age 55 with 30 Any age with 30 worked	Age 55 with 30	Age + Service = 85	Age 55 with 5
N.B.	Age 60 with 30	Age 60 with 30	Age + Service = 85	No age, 10 Sessions
QUE.	Age 60 with 35	Age 60 and 20	Age + Service = 85	Age + Service = 65
ONT.	Age 60 and 20	Age 60 and 20	Age + Service = 85	Age + Service = 55
MAN.	Age 55 and 10	Age 55 and 10	Age 55 and 30 or 25 yrs.	Not available
SASK.	Age 60 and 20	Age 60 and 20	Not available	Age 50
ALTA.	Age 55 and 30	Age 55 and 30	Age 55 or 25 yrs.	Age 55 and 5
B.C.	Age 55 and 35	Age 55 and 35	Age 55 and 30 yrs.	Age 55 or Age + Service = 60
FED.	Age 60	N/A	Age 55 and 30 or 25 yrs.	No age, 6 yrs. of pensionable service.

This table indicates that the early retirement conditions under the Provincial Teachers' and the Uniformed Services Pensions Plans are more generous than elsewhere in Canada.

The following table indicates the normal retirement age for comparable plans in Canada.

TABLE J

Normal Retirement Age

Comparison	Public Service Plan	Teachers' Plan	Uniformed Services Plan	Members of the House of Assembly Plan (1)
NFLD.	Age 65	Age 60	Commissioned: After 30, no later than age 60 Non-Commissioned: After 25, no later than age 55	Age + Service = 60 (55 for Premier)
P.E.I.	Age 65	Age 60	Not available	Not available
N.S.	Age 65	Age 65	Age 60	Age 55
N.B.	Age 65	Age 65	Age 65	Not specified, 10 Sessions
QUE.	Age 65	Age 65	Not available	Age + Service = 65
ONT.	Age 65	Age 65	Age 60	Age + Service = 55
MAN.	Age 65	Age 65	Age 55 or 60	Not available
SASK.	Age 65	Age 65	Not available	Not available
ALTA.	Age 65	Age 65	Age 55 or 60	Age 55
B.C.	Age 60	Age 60	Age 60	Age 55
FED.	Age 60	N/A	Age 60	No age, 6 yrs service

(1) Some other factors may apply. See Appendix 10.06 for more complete details.

The purpose of the above tables is to determine whether pensions under Provincial Plans become payable at a later or earlier age than may be the case under similar plans in Canada. If, on average, Provincial Plans provide for an earlier retirement age than similar plans in Canada, the value of these pensions to employees is greater, all other factors being equal.

The Commission concludes on the basis of these comparisons that:

(i) the retirement age for the Public Service Pension Plan and the Members of the House of Assembly (Retiring Allowances) Plan does not differ significantly from the retirement ages for similar plans across Canada;

(ii) the retirement conditions for the Uniformed Services Pension Plan are better than for similar plans in Canada; and,

(iii) the retirement conditions for the Teachers' Pension Plan are better than for similar plans in Canada.

The results indicated in (iii) above are in large part attributable to a compulsory retirement age of 60 for the Teachers' Pension Plan and the possibility of retirement after 30 years of service irrespective of age.

Indexation of Pensions

The following table indicates the indexing practises being following provincially and elsewhere in Canada for Public Service and Teachers' Pension Plans.

TABLE K

Indexation of Pensions

	Public Service		Teachers'	
Comparison	Type of Indexation	Formula	Type of Indexation	Formula
NFLD.	Ad Hoc	---	Ad Hoc	----
P.E.I.	Formal	CPI to 8% Max.	Formal	CPI to 8% Max.
N.S.	Formal	CPI to 6% Max.	Formal	CPI to 6% Max.
N.B.	Formal	CPI to 6% Max.	Formal	CPI to 6% Max.
QUE.	Formal	CPI less 3%	Formal	CPI less 3%
ONT.	Formal	CPI to 8% with carry over provision.	Formal	CPI to 8% with carry over provision.
MAN.	Formal	CPI to 66 2/3%	Formal	CPI to 66 2/3%
SASK.	Ad Hoc	---	Ad Hoc	----
ALTA.	Ad Hoc	---	Ad Hoc	----
B.C.	Formal	CPI	Formal	CPI
FED.	Formal	CPI	N/A	N/A

On the basis of the above, it is clear that the most common practise in Canada for Public Sector Plans is to index benefits on a formal basis with the indexation formula being part of the Pension Plan. The Commission is of the view that the Provincial Pension Plans should be formally indexed but subject to our comments in Section 7.

Termination of Service Benefits

Most Public Sector Pension Plans provide certain benefits to employees who terminate their service prior to retirement. On termination of service prior to 10 years, most plans provide for a return of employee contributions together with interest. On termination of service with 10 or more years of service, most plans provide a deferred annuity, based on service as a member of the plan, and payable from normal retirement age.

The Provincial Pension Plans provide a level of termination of service benefits comparable to those provided under similar plans in Canada, except with regard to interest paid on contributions.

Death and Survivor Benefits

Most Public Sector Pension Plans provide for payment of a death benefit for employees with less than 10 years of service equal to employee contributions plus interest. On the death of an employee with 10 or more years of service, or on the death of a pensioner, most Public Sector Pension Plans provide for payment of a survivor's pension equal to 50% to 60% of the accrued benefit or pension being paid, whichever may be applicable.

The Provincial Pension Plans provide a level of death and survivor benefits comparable to those provided elsewhere in Canada with the exception of a minimum cash refund guarantee. This guarantee consists of a minimum payment of employee contributions plus interest less pension payments to an estate of the employee who does not leave a survivor.

Disability Benefits

As is the case with most Public Sector Plans, the Provincial Pension Plans provide for payment of a disability pension once an employee has completed 10 years of service and meets the definition of disability as prescribed in the Plan. The level of disability pension payable relates to the pensionable service accumulated to date of disablement. The following table indicates the level of disability pension payable under the Public Service Pension Plan for various periods of pensionable service.

Pensionable Service	Disability Pension As Percentage of Pension Salary Base
10	20%
15	30%
20	40%
25	50%
30	60%
35	70%

The Commission is of the view that the benefit provided for younger employees with low service is inadequate. For older employees near their earliest possible retirement date, the benefit provision could be used to circumvent the retirement rules of the Plans. For these reasons and others, the Commission would favour the removal of Disability Pensions from Provincial Pension Plans and their replacement with a universal insured long-term disability plan which would be financed by equal employee/employer contributions.

Redundancy Benefits

The Public Services Pension Plan states at section 15

> "Every employee shall be retired
>
> (c) if the post held by the employee is abolished or his services are no longer required as a result of a reorganization by which greater economy and efficiency is effected and no other post for which the employee is suited is vacant."

The Uniformed Services Pension Plan states at section 20

> "Where an employee has been credited with at least ten years of pensionable service and the position in which the employee was employed is abolished or his services are no longer required as a result of reorganization, and employment as an employee

> not lower in rank, salary and emoluments is not offered to him within one month after his position is abolished or his services are no longer required, the employee shall immediately be awarded a pension calculated and paid in accordance with this Act."

Seven provinces do not have redundancy provisions in their public service pension plans, and of the remainder, severe restrictions apply.

There are no provisions for redundancy pensions across Canada that the Commission is aware of, for uniformed services, teachers' or elected officials.

Therefore, the Commission concludes that the provision is not comparable to other plans in Canada and, furthermore, is not comparable among the four Provincial plans.

The evidence submitted suggests that the redundancy pension provision has been used as a means of terminating unwanted employees at little cost to the employer and, further, has permitted young employees to retire with maximum pension benefits through low cost purchase of service arrangements. While the employer has enjoyed reduced salary costs, the pension plan has been burdened with the excessive severance cost in the form of increases in the unfunded liability.

The Commission believes that the provisions for redundancy should be removed from the Public Service Pension Plan and the Uniformed Services Pension Plan.

Purchase of Service Benefits

The Provincial Pension Plans contain certain purchase of service provisions. These provisions generally call for a contribution towards the purchase of service equal to the combined value of employee and employer contributions for such service. The Commission is of the view that the existing contribution formulas are arbitrary and recommends that they be revised to a level approximating the actuarial cost of the pension benefit resulting from the service being purchased.

3.03 NATIONAL PENSION REFORM CONSENSUS

The Commission has been asked to review and comment on the required changes to benefit programs resulting from the National Pension Reform Consensus. The Commission has concluded that an effort has been made to standardize legislative provisions of provincial and federal pension benefits acts; however, there is no true consensus. Each province has approached legislative changes with similar but different approaches to suit their specific requirements.

A detailed discussion is provided in Appendix 10.07.

The Commission concludes that there are no required changes to the pension benefit program resulting from this consensus. It does, however, feel that many of the areas considered in the consensus are desirable, and the process of attempting to standardize legislation should continue among governments.

The Commission further concludes that any change to pension benefits should be made if, and only if, the current and prior actuarial costs of the benefits are paid into the fund at the time the benefit change is introduced.

The Commission concludes that the following changes should be implemented in Provincial Pension Plans concurrent with their review,

- pension benefits to be vested and locked in after 5 years of service, possibly reducing to 2 years in the future;
- pension entitlement to be capable of splitting on marriage breakdown; and,
- disclosure of benefits and finances of plan to be emphasized,

providing provision is made for the appropriate levels of financing for these changes.

3.04 FEDERAL PENSION TAX REFORM PROPOSAL

The Commission has been asked to review and comment on the required changes to benefit programs resulting from the Federal Tax Reform Proposal concerning tax assistance to retirement savings.

These pension plans are a provincial responsibility and, therefore, the benefit levels provided are not dictated by the federal government. The Commission concludes that there are no required changes to the levels of benefits provided under Provincial Plans resulting from income tax reform concerning tax assistance to retirement savings.

A summary of these proposals as tabled in the House in December of 1989 is included in this report as Appendix 10.08.

The basis of this reform program is to provide fair and equal access for all Canadians to tax assistance available for retirement savings regardless of whether they participate in a pension plan, registered retirement savings plan, or deferred profit sharing plans.

While the level of benefits provided under Provincial Pension Plans need not be altered, the form in which these benefits may be provided will most certainly have to be changed. With the exception of the Public Service Pension Plan, Provincial Pension Plans have benefit provisions which exceed the limits for registered pension plans; consequently, such excess benefits will have to be financed under other arrangements. Since these other arrangements will not enjoy the same level of tax assistance, the cost of these excess benefits will undoubtedly be increased.

3.05 CONSIDERATION OF EQUITY

The Commission is of the view that this section of its Report on Pension Benefits would be incomplete without some discussion on equity. Currently, the Province maintains four separate pension programs for its employees. As has been seen in this Section of the Report, there are some striking differences among the plans.

- Annual benefit accrual rates vary by employee group.
- The formula for determining pension salary base varies by employee group.
- The retirement age for members varies by employee group.

The Commission is of the view that most of these differences need not exist. The rationale for this is not dissimilar from that offered by the 1966 Royal Commission as follows:

"Universality

(1) This inquiry touches four groups:

1. teachers;
2. Government employees;
3. constabulary (including police, firemen and penitentiary wardens);
4. employees of the College of Fisheries.

(2) These four groups get pensions by authority of four separate Acts of the Legislature. Four separate and different pension plans stem from these four Acts.

(3) The fact is all four groups receive their pensions from Government funds either directly or indirectly, so that, as far as pensions are concerned, they can be considered members of the same family, or to put it in more practical terms, pensioners of the same employer.

(4) One of the first things the Commission noted was the disparities between the superannuation arrangements of these groups. It considered that as a model employer, the Government should practice equal pension treatment to these groups whose pensions come from Government funds.

(5) Obviously, equal treatment does not mean the same amount of pension for each employee. It does mean that the same principles and rules for calculating a pension should apply equally to all the employees, subject to any anomalies which are imposed for the general good.

(6) Following this line of thought, the Commission has reviewed the four Acts and RECOMMENDED that pension provisions be made similar as far as possible. The same principles and rules are made to apply equally in all possible cases. Of course, there are varying conditions in the different groups. Proper and full allowance should be made for these differences.

(7) A basic consideration is that in respect to future service under the proposed new plans, four main factors will determine the amount of service pension due. These factors are:

1. length of service;
2. salary;
3. rate of benefit;
4. maximum amount of pension.

(8) For example, if two employees are pensioned with the same length of service and with the same salary record, they will receive the same amount of pension irrespective of whether they are civil servants, teachers in grade schools or the College of Fisheries, or Policemen or Firemen or Penitentiary Wardens.

(9) Where salaries are equal, pensions may vary with differences in length of service and vice versa. An important consideration is that the same principles and rules would apply equally to all future members of the pension plans."

CONTRIBUTION RATES

4.01 Ability to Meet Prescribed Benefits

4.02 Comparison with Similar Plans in Canada

Section 4.00

CONTRIBUTION RATES

4.01 ABILITY TO MEET PRESCRIBED BENEFITS

Recent actuarial reports, including the 1989 reports, have indicated that current contribution rates have not been adequate to pay for the annual benefits being earned under the Plans. These current service costs shortfalls increase the unfunded liability. These contribution shortfalls are based on prescribed benefits without indexation. Section 7.00 includes comments on required contribution levels for prescribed benefits including indexation.

The shortfalls in contribution rates to cover current service costs, based on the 1989 actuarial report, expressed as a percentage of current payroll, are as follows:

	Actuarial Cost of Current Service	Current Contribution Rate-Matched	Shortfall
Public Service Pension Plan	9.9%	8.8%	1.1%
Teachers' Pension Plan	13.4%	9.0% (1)	4.4%
Uniformed Services Plan	22.1%	9.4%	12.7%
Members of the House of Assembly Plan	42.6%	14%	28.6%

(1) The Teachers' and the Province each contribute an additional 1% of payroll to a special early retirement fund to finance the cost of a negotiated special "30 and out" provision.

Additional shortfalls in contribution rates to cover past service costs, expressed as a percentage of current payroll, are as follows:

Public Service Pensions Plan	9.6%
Teachers' Pension Plan	22.4%
Uniformed Services Plan	33.1%
Members of the House of Assembly Plan	Not specified

These are dealt with separately in Section 5.00 of this Report.

Expressed in terms of dollars, the shortfalls are estimated to be:

	Current Contribution Shortfall Service
Public Service Pension Plan	$ 7,000,000
Teachers' Pension Plan	19,000,000
Uniformed Services Plan	4,000,000
Members of the House of Assembly Plan	1,000,000
Total	$31,000,000

Unless annual contribution levels are increased to generate this additional revenue, the unfunded liabilities of the Plans will increase by this amount annually.

It is the view of the Commission that if no action is taken to increase contributions or reduce benefits, the cost of benefits earned on Provincial Pension Plans will be at least $31 Million higher than disclosed in Provincial Accounts. To compensate for this, the Province could either:

i) Raise Provincial Sales Tax by 3/4 of 1%;

or,

ii) Raise Provincial Personal Income Taxes by 7.75%;

or,

iii) Reduce Services.

In the Commission's opinion, these alternatives may well be unacceptable to the Province and its taxpayers.

If the contribution shortfall was shared with employees, taxpayers' costs for the Provincial Pension Program would be increased by $15.5 Million. To generate the additional revenue to compensate for this, the Province could either:

i) Raise Provincial Sales Tax by 3/8 of 1%;

or,

ii) Raise Provincial Personal Income Taxes by 3.875%.

or,

iii) Reduce Services.

In the Commission's opinion, these alternatives may also be unacceptable to the Province and its taxpayers. The additional contributions may also be unacceptable to the employees.

In Section 3.00, the Commission concluded that the benefits of the Public Service Pension Plan meet the basic objective of providing pensioners with an adequate pension to meet their standard of living, at least initially. The Commission has also concluded that the benefits of other Provincial Pension Plans are in excess of benefits of similar plans elsewhere in Canada and that similar plans in Canada have benefit levels generally equivalent to Newfoundland Public Service Pension Plan.

Accordingly, the Commission advocates a "one plan for all" concept using the Public Service Pension Plan as a model since this plan, together with the Commission's various recommendations, best meets the basic objective. Based on estimates provided by the Province's Actuary, the current service cost of such a plan would amount to 10% of payroll. This means that the contribution shortfall for current service benefits would be reduced to $12 Million. On a shared contribution basis, this may prove to be more acceptable to the Province and its taxpayers and to the employees.

4.02 COMPARISON WITH SIMILAR PLANS IN CANADA

The employee contribution rates have been compared to the employee contribution rates in similar plans in Canada. The following table shows the results of these comparisons.

TABLE 4A

EMPLOYEE CONTRIBUTIONS

Plan	PSPP	TPP	USPP	MHAPP
NFLD.	6%	With dependants 5%, (1) Without dependants 4%	6%	7% of sessional plus 7% of non-taxable travel allowance plus 7% of salary as office holder.
P.E.I.	7.5%	7.5%	Not available	Not available.
N.S.	7%	7.52%	Halifax - 7%	8% of all remuneration.
N.B.	7%	7.5%	St. John - 8.5%	Members - 9.4% of indemnity. Minister - 6% of salary.
QUE.	7%	7%	Not available	10%
ONT.	7%	7.9%	OMERS - 8%	10% of remuneration.
MAN.	7%	7.3%	Winnipeg - Firefighters 7.5% - Police 7.305% of earnings	Not available.
SASK.	5%	7.85%	Not available	9% of all remuneration.
ALTA.	Union - 6.25% Management - 5%	5%	Calgary - Firefighters 6.25% - Police 6.45%	7.5% of salary
B.C.	7%	7.6%	Vancouver - 7.5%	9% of salary
FED.	7.5%	N/A	RCMP - 7.5%	Members - 11% of salary Senators - 6% of salary

(1) Additional 1% added specifically to finance the 30 and out provision.

Comment

Most plans are fully or partially integrated with the Canada Pension Plan with the exception of the legislative assemblies.

The following conclusion can be made with respect to the values contained in the above table.

i) The prevalent practise across Canada is to integrate employee contributions with contributions under the Canada Pension Plan. No evidence was presented to this Commission that would indicate that this practice is not desirable.

ii) While it would appear that Provincial employee contribution rates are low in relation to rates elsewhere, most plans in other jurisdictions provide for formal indexing of benefits. The excess contributions in other Provinces may provide for part of the cost of this valuable benefit.

iii) The only plan where there is a different contribution rate based upon dependant or no-dependant status is the Provincial Teachers' Plan. The Commission concludes that this duel system should be eliminated and replaced with a single rate consistent with the Public Service Pension Plan.

PAST SERVICE UNFUNDED LIABILITY

5.01 Funding the Past Service Pension Liability

5.02 Twenty Year Plan

5.03 Special Payments

5.04 Table 5A - Growth Pattern of the Unfunded Liability

Section 5.00

PAST SERVICE UNFUNDED LIABILITY

5.01 FUNDING THE PAST SERVICE PENSION LIABILITY

The 1966 Report discussed the accrued liability and defined it as thus:

> "Accrued liability represents the actuarial value of benefits earned to date by present employees".

The Report further stated that the:

> "Accrued liability under proposed plans is calculated at $29,635,000."

Since there were no assets accumulated under the Plan, this amount also represented the unfunded liability in the Plan.

The Report specified that 11,608 men and women were recommended for coverage. The accrued liability amounted to $2,553 per employee.

The 1966 Report was the basis for the inception of the present day pension plans. From the outset, there was an unfunded liability which would have been difficult for the government of that day to fully fund given its budgeting limits.

The 1966 Report recommended that the "accrued liability be "frozen" and only interest of 6 1/2% be paid". The Report further recommended that "the employer contribution be designed to pay interest on the accrued liability at 6 1/2% plus the yearly cost of earned pension benefits after deduction of the employee's contribution".

This recommendation was not followed and financing of the pension plans was not started until 1980. The "FUND" was instituted at that time by bringing the employees of the College of Fisheries and the Newfoundland Hospital Association into the Public Service Pension Plan. These plans contributed assets of $4,000,000 and $29,000,000 respectively. While these Plans were considered to be fully funded based upon the terms and conditions of their respective pension plans, the estimated liability for these members in the Public Service Pension Plan amounted to almost double this amount. This excess liability resulted from the more generous pensions benefit package provided under the Public Service Pension Plan.

Since 1966:

- The pension plan coverage has grown from 11,608 employees to over 35,000 active plan members.
- Contribution levels have been set at levels below the actuarial cost of benefits being earned.
- Purchase of service provisions have been granted at costs well below the actuarial cost of these provisions.
- Benefit improvements have been made without any adjustment in underlying contributions.

The combined result of the above is that the unfunded liabilities of these pension plans have been growing at an alarming rate.

In 1966, the unfunded liability was measured in millions of dollars and has now grown to billions. The following is the growth pattern since 1966. (See 5.04 - Table 5A for details.)

1966	$29,635,000
1984	$1,281,700,000
1987	$1,708,800,000
1988	$1,943,800,000
1989 - Estimated 31 Dec. 1989	$2,100,000,000

The unfunded liability per member is now approximately $60,000 as compared to $2,553 in 1966.

This unfunded liability will continue to grow even if current contribution levels are increased to the level required to meet the cost of benefits being earned under the Plans. The annual increase is estimated by the government's actuary to be $175 million. This represents the interest component only on the existing liability to employees for benefits earned to date.

This amount also represents the annual contribution that would have to be made by the Province to the Pension Fund to ensure that there would be no further increase in this liability. In order to generate this revenue, the Province could either:

i) increase Sales Tax from 12% to 17%;

ii) increase Personal Income Tax by 48%; or,

iii) reduce services.

The Commission is of the view that these alternatives are as unacceptable in 1989 as they were in 1966.

5.02 TWENTY YEAR PLAN

The Commission has reviewed the alternative of fully funding Provincial Pension Plans over the next 20 years and has concluded that this is not a realistic alternative. The problems of full funding are as equally applicable today as they were in 1966 and in the intervening 23 years. The Commission is of the view that the current Public Sector Practise of funding only 50% of pension obligations supports their position.

Method of Funding

Methods of funding pension liabilities vary from the pay as you go concept to full funding of the pension obligations. The current Provincial practise is a method between these two extremes.

Because of the basic cost formula for Provincial Pensions, the Commission recognizes the following:

(i) Methods which provide for full funding will ultimately lead to less direct charges to taxpayers since the cost of benefits will be offset by increased investment income.

(ii) Methods which provide for full funding may also reduce funds available to stimulate economic growth which could otherwise provide the additional revenues necessary to support the increased cost of benefits on only partially funded plans.

Since it is difficult to evaluate quantitatively the many factors outlined above, the Commission believes it is appropriate to rely on the norms being followed by other Public Sector Plan Sponsors in Canada.

Since the Commission is not aware of any public plan that is fully funded, this option is not being recommended. As previously noted, the norm for public service plans is that assets normally represent 50% of the value of the plan liabilities.

Overall, the pension plans currently have assets of $463.3 Million compared to liabilities of $2,407.1 Million. This computes to an approximate 20% overall funding level. This funding level has been achieved over the last ten years whereas the current funding levels of most Canadian Public Service Plans have been achieved over a longer period of time.

Accordingly, the Commission recommends that the Province consider a 50% funding level as a target to be achieved over a 20 year period.

5.03 SPECIAL PAYMENTS

The Commission believes a 50% funding level may be achieved with a combination of supplementary payments from the Province and excess investment earnings above the underlying assumptions.

Accordingly, the Commission recommends that the Province contribute a special payment of 5% of pensionable payroll for all Plans, excluding the Public Service Pension Plan, to the Pooled Pension Fund to assist in achieving this 50% funding target over a period of 20 years. The Public Service Pension Plan payroll has been excluded from a special payment because this Plan is already 33% funded.

Graphs have been prepared by the Actuary showing costs to the Province and assets accumulated under different scenarios as follows:

Graph A) Provincial costs on the basis of:

- i) The current financing methods.
- ii) The current financing method if all Plans are combined.
- iii) The same as ii) except that contributions are increased on a shared basis to meet current service costs.
- iv) The same as iii) except that past service contribution by the Province is 5% of pensionable payroll excluding the Public Service Pension Plan.
- v) The same as iii) except that past service benefits are fully funded by Provincial contributions over 20 years.

Graph B) Assets that will be accumulated on the basis of A) iii) above.

Graph C) Assets that will be accumulated on the basis of A) iv) above. This graph shows that the assets accumulated with the recommended Provincial special payment should amount to $3.6 billion after 20 years or 34% of the projected liability.

Graph D) Assets that will be accumulated on the basis of A) iv) above if the real rate of return was 2% higher. This graph shows that the assets accumulated with the recommended Provincial special payment plus an excess real rate of return of 2% should amount to $5.3 billion after 20 years or 50% of the projected liability.

Graph E) Assets that will be accumulated on the basis of A) v) above. This graph shows that the liability for Provincial Pension Plans in 20 years will amount to $10.7 billion.

These graphs are shown on the following pages.

Graph A outlines Provincial Pension costs under various scenarios with Graphs B, C, D, and E indicating the funding level after 20 years resulting from the alternatives.

Scenario A estimates Provincial costs if current financing is continued and the Plans are combined into one. The costs will go up significantly in 18 years and assets will be exhausted at that time.

Scenario B estimates Provincial costs if current financing is continued and Plans remain separate. The costs will go up significantly in about 10 years. The Teachers' fund will be exhausted and the additional cost will result from deficiency payments to the Teachers' fund.

Scenario C estimates Provincial costs if current financing is increased to cover current service costs using the Accrued Benefit Cost Method on a shared basis and all Plans are combined into one. The costs will increase slightly and consistently over the 20 year period and assets will remain at approximately 20% of liabilities (Graph B).

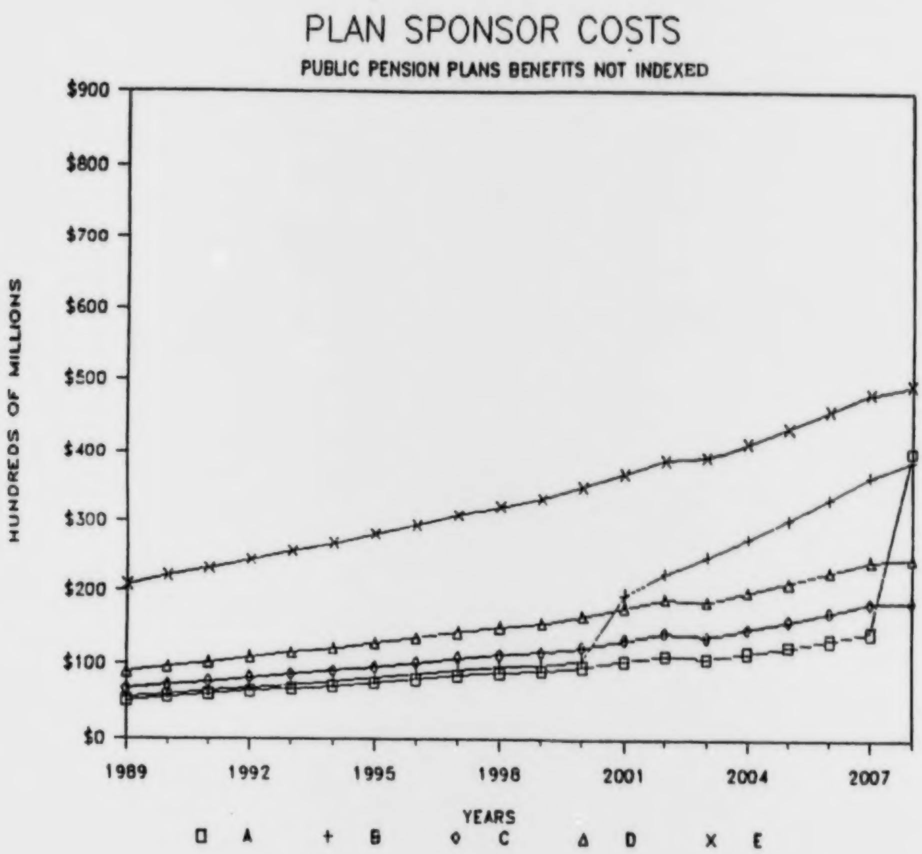
Scenario D estimates Provincial costs if contributions are increased on a shared basis to meet current service costs and special payments of 5% of pensionable payroll are met. Indicated costs will be lower if recommended benefit changes were implemented. The costs are increased moderately and consistently over the 20 year period and assets are increased to 33% and 50% of the liability depending upon investment income (See Graphs C and D).

Scenario E estimates Provincial costs if current service costs are met and the Province fully funds the liability over a 20 year period. The costs increase substantially with assets approaching 100% of the liability after 20 years (Graph E).

The Commission concludes that a 50% funding level is desirable to protect the ability of the fund to meet its obligations to plan members. This level of funding can be achieved at the end of the next 20 years.

Scenario D outlines the cost to the Province and the assets that would be accumulated if the current financing method of all Plans are combined and contributions are increased on a shared basis to meet current service costs combined with a special payment of 5% of selected payrolls. These additional contributions to the fund and the related investment income will result in a 50% funding level at the end of 20 years. The assets accumulated will amount to approximately $5 Billion to pay a liability of $10.7 Billion.

GRAPH A



A - Provincial costs if current financing continued and Plans are combined into one.

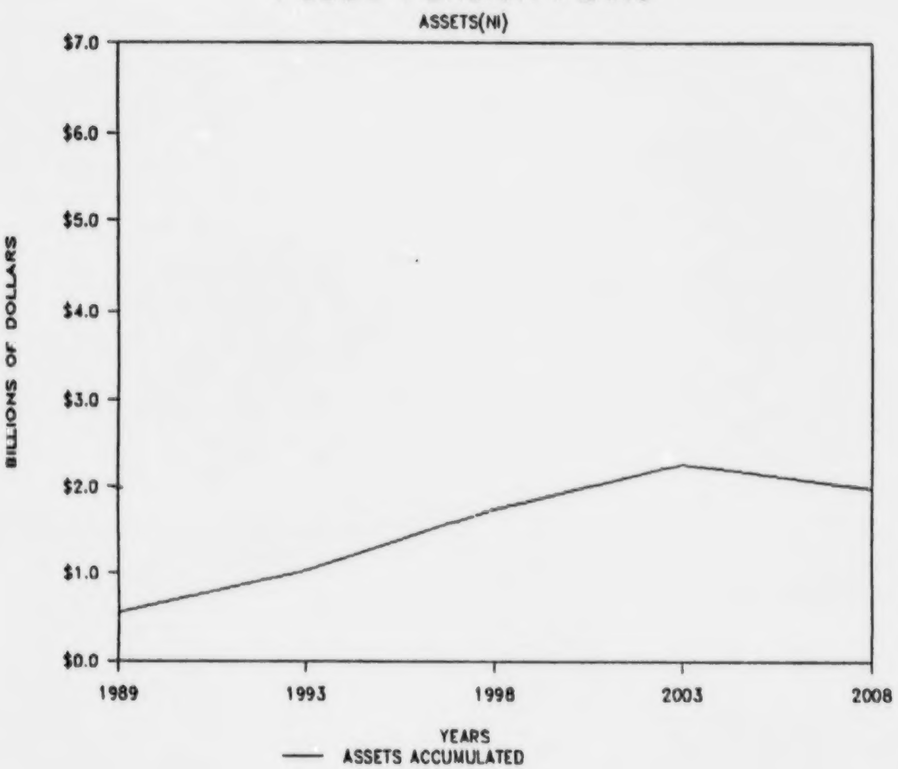
B - Provincial costs if current financing continued and Plans remain separate.

C - Provincial costs if current financing increased to current service level on Accrued Benefit Cost Method on shared basis.

D - Provincial cost if current benefits maintained on basis recommended by Commission. Indicated costs would be lower if recommended benefit changes were implemented.

E - Provincial costs on the same basis as C increased by periodic payments to fully fund the Plans over 20 years.

GRAPH 8



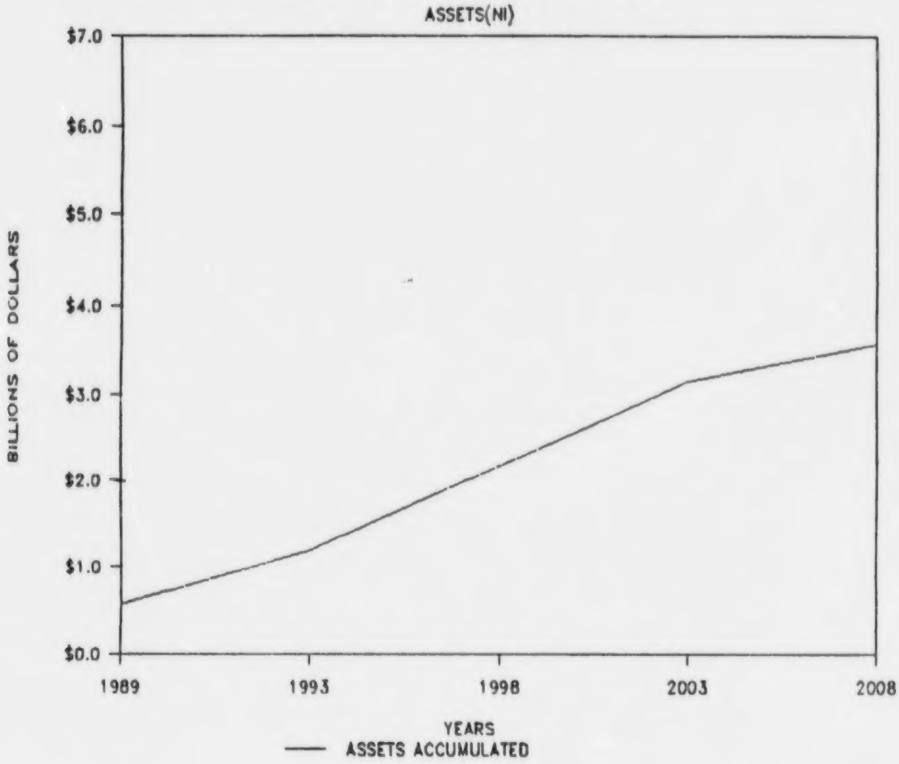
YEAR	MEMBER MATCHED	ADDITIONAL CURRENT SER	DEFICIENCY PAYMENT
1989	$102.3	$30.7	$0.0
1993	$132.9	$39.7	$0.0
1998	$176.1	$50.7	$0.0
2003	$216.4	$62.5	$0.0
2008	$288.4	$85.4	$0.0
TOTAL 20 YEARS	$3,737.5	$1,093.2	$0.0

YEAR	PAST SERVICE	TOTAL CONTRIBUTION	INVESTMENT INCOME
1989	$0.0	$133.0	$43.7
1993	$0.0	$172.7	$83.1
1998	$0.0	$226.8	$120.9
2003	$0.0	$279.0	$162.2
2008	$0.0	$373.8	$149.5
TOTAL 20 YEARS	$0.0	$4,830.8	$2,355.8

YEAR	TOTAL INCOME	TOTAL BENEFITS	ASSETS ACCUMULATED
1989	$176.7	$88.6	$551.5
1993	$255.7	$114.9	$1,034.9
1998	$347.7	$205.5	$1,743.4
2003	$441.1	$388.7	$2,269.3
2008	$523.4	$698.9	$1,980.9
TOTAL 20 YEARS	$7,186.5	$5,669.0	

GRAPH C

PUBLIC PENSION PLANS



YEAR	MEMBER MATCHED	ADDITIONAL CURRENT SER	DEFICIENCY PAYMENT
1989	$102.3	$30.7	$0.0
1993	$132.9	$39.7	$0.0
1998	$176.1	$50.7	$0.0
2003	$216.4	$62.5	$0.0
2008	$288.4	$85.4	$0.0
TOTAL 20 YEARS	$3,737.5	$1,093.2	$0.0

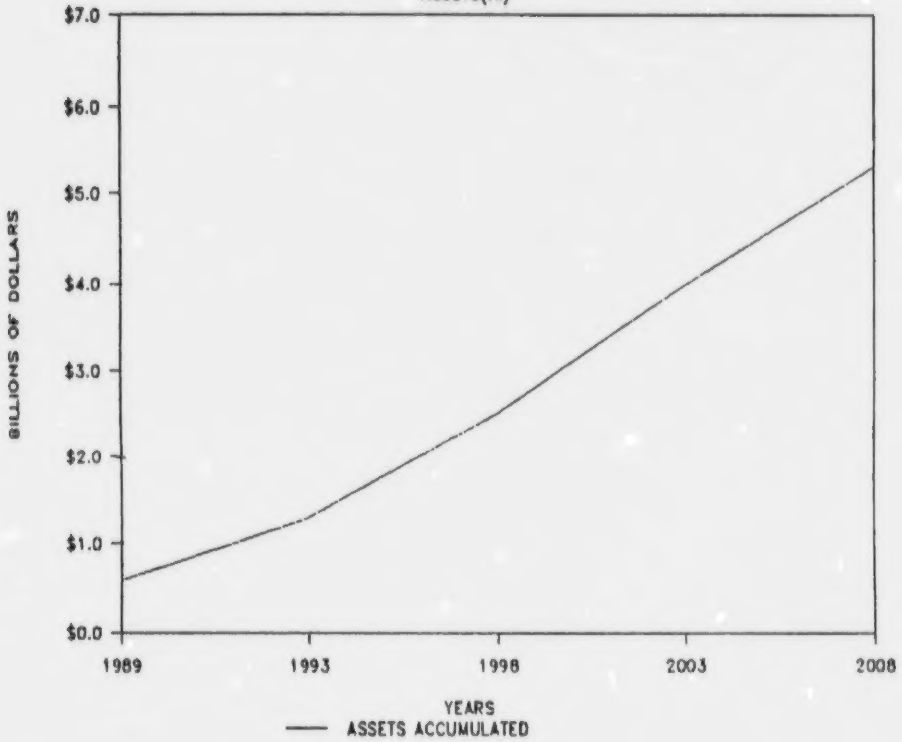
YEAR	PAST SERVICE	TOTAL CONTRIBUTION	INVESTMENT INCOME
1989	$23.2	$156.2	$44.7
1993	$29.3	$201.9	$95.2
1998	$37.3	$264.2	$150.0
2003	$47.7	$326.6	$222.2
2008	$60.8	$434.7	$259.1
TOTAL 20 YEARS	$793.7	$5,624.4	$3,162.9

YEAR	TOTAL INCOME	TOTAL BENEFITS	ASSETS ACCUMULATED
1989	$201.0	$88.6	$575.7
1993	$297.1	$114.9	$1,196.7
1998	$414.1	$205.5	$2,178.9
2003	$548.8	$388.7	$3,153.8
2008	$693.8	$698.9	$3,581.6
TOTAL 20 YEARS	$8,787.3	$5,669.0	

GRAPH D

PUBLIC PENSION PLANS

ASSETS(NI)

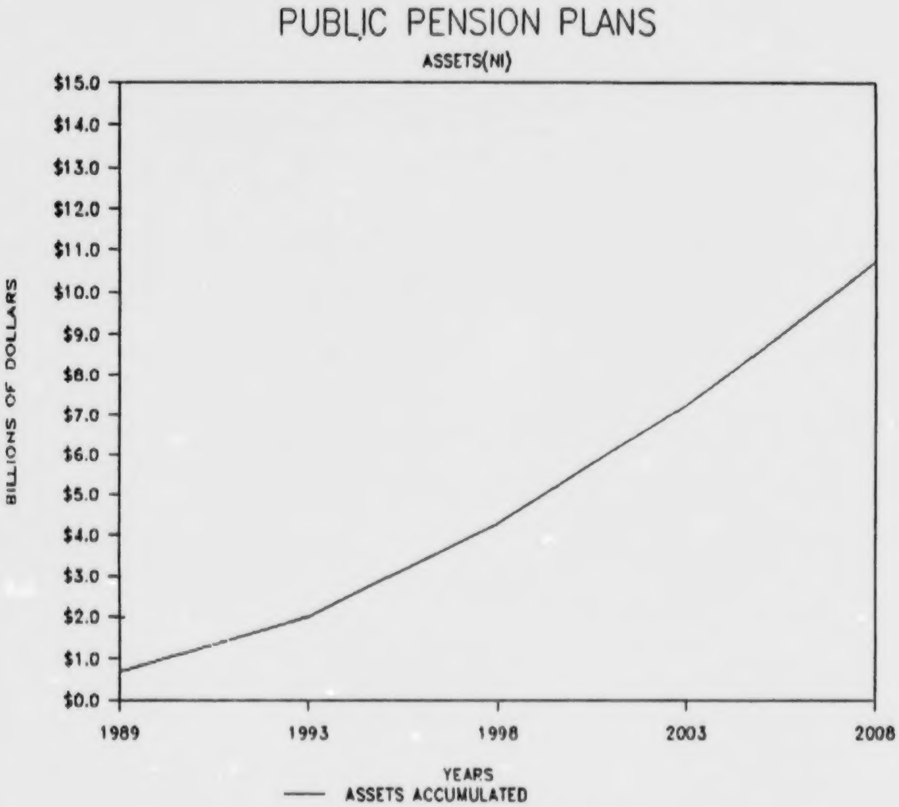


YEAR	TOTAL INCOME	TOTAL BENEFITS	ASSETS ACCUMULATED
1989	$210.9	$88.6	$585.6
1993	$325.2	$114.9	$1,287.8
1998	$479.7	$205.5	$2,513.3
2003	$675.4	$388.7	$3,989.2
2008	$905.6	$698.9	$5,295.9
TOTAL 20 YEARS	$10,501.5	$5,669.0	

YEAR	PAST SERVICE	TOTAL CONTRIBUTION	INVESTMENT INCOME
1989	$23.2	$156.2	$54.7
1993	$29.3	$201.9	$123.3
1998	$37.3	$264.2	$215.5
2003	$47.7	$326.6	$348.8
2008	$60.8	$434.7	$470.9
TOTAL 20 YEARS	$793.7	$5,624.4	$4,877.1

YEAR	MEMBER MATCHED	ADDITIONAL CURRENT SER	DEFICIENCY PAYMENT
1989	$102.3	$30.7	$0.0
1993	$132.9	$39.7	$0.0
1998	$176.1	$50.7	$0.0
2003	$216.4	$62.5	$0.0
2008	$288.4	$85.4	$0.0
TOTAL 20 YEARS	$3,737.5	$1,093.2	$0.0

GRAPH B



YEAR	MEMBER MATCHED	ADDITIONAL CURRENT SER	DEFICIENCY PAYMENT
1989	$102.3	$30.7	$0.0
1993	$132.9	$39.7	$0.0
1998	$176.1	$50.7	$0.0
2003	$216.4	$62.5	$0.0
2008	$288.4	$85.4	$0.0
TOTAL 20 YEARS	$3,737.5	$1,093.2	$0.0

YEAR	PAST SERVICE	TOTAL CONTRIBUTION	INVESTMENT INCOME
1989	$143.3	$276.3	$50.1
1993	$170.9	$343.5	$156.4
1998	$203.0	$429.8	$290.6
2003	$241.1	$520.0	$501.9
2008	$286.3	$660.1	$751.3
TOTAL 20 YEARS	$4,196.8	$9,027.5	$6,926.8

YEAR	TOTAL INCOME	TOTAL BENEFITS	ASSETS ACCUMULATED
1989	$326.5	$88.6	$701.2
1993	$499.9	$114.9	$2,008.1
1998	$720.4	$205.5	$4,278.0
2003	$1,021.9	$388.7	$7,259.0
2008	$1,411.4	$698.9	$10,748.6
TOTAL 20 YEARS	$15,954.3	$5,669.0	

5.04 **TABLE 5-A**

GROWTH PATTERN OF THE UNFUNDED LIABILITY

(1984 - 1989 - $ Million)

1984

	Liability	Plan Assets	Unfunded Liability
TPP	$ 710.7	36.2	674.5
PSPP	664.3	154.6	509.7
USPP	85.7	--	85.7
MHAPP	11.8	--	11.8
	$1,472.5	190.8	1,281.7

1987

	Liability	Plan Assets	Unfunded Liability
TPP	$ 970.2	76.0	894.2
PSPP	980.6	301.0	679.6
USPP	115.0	--	115.0
MHAPP	20.0	--	20.0
	$2,085.8	377.0	1,708.8

1988/89

	Liability	Plan Assets	Unfunded Liability
TPP June 30, 1989	$1,169.9	108.0	1,061.9
PSPP Dec. 31, 1988	1,082,7	355.3	727.4
USPP Dec. 31, 1988	129.7	--	129.7
MHAPP Dec. 31, 1988	24.8	--	24.8
	$2,407.1	463.3	1,943.8

PURCHASE OF UNWORKED SERVICE AND OTHER PURCHASE OPTIONS

6.01 Purchase of Past Service and Contractual Time

6.02 Purchase of Contributory Service

SECTION 6.00

PURCHASE OF UNWORKED SERVICE AND OTHER PURCHASE OPTIONS

6.01 PURCHASE OF PAST SERVICE AND CONTRACTUAL TIME

Additional pensionable service may be acquired under Provincial Pension Plans with or without cost to the employees. In all cases considered, the cost of purchasing additional pensionable service was less than the actuarial cost of providing the related pension benefit.

The Public Service (Pensions) Act
Purchase of Pre April 1, 1967 Service

The Act states at section 9

"An employee who, on the first day of April, 1967, was

(a) an established civil servant;

(b) an unestablished civil servant;

(c) a married woman;

(d) an employee whose service was of a seasonal but recurring nature; or

(e) an employee who was not classified as pensionable under the existing plan,

shall, in addition to pensionable service under section 8, be credited under the Pension Plan with

(f) all service completed by him as an employee prior to the first day of April, 1967, whether or not such service was service under the Civil Service Act; and,

(g) any additional pensionable service which has been credited or which he was, before April 1, 1967,

> eligible to have credited to him under the Civil Service Act on retirement,
>
> if he elects to participate in the Pension Plan and repays to the Fund established pursuant to The Pensions Funding Act, within such time as the Minister may approve, any gratuity paid to him in respect of such pensionable service."

The time limit prescribed is at the discretion of the Minister.

Pre April 1, 1967 service may be granted at no cost, with the approval of Cabinet subject to, the purchase of all periods of service after April 1, 1967 and repayment of any gratuity awarded for pre April 1, 1967 service. This reflects the fact that the Plan was non-contributory prior to April 1, 1967.

Pensionable Service after April 1, 1967 may be purchased at any time prior to retirement at the contribution rates based upon the salary at the time of recommencement. Payments may be made in a lump sum or financed.

Because of the option to delay purchase, this practise reduces the investment earning ability of the fund. Also, the contribution rate is insufficient to cover the actuarial cost to provide the related pension benefit.

The Commission recommends that the Minister of Finance provide a further period of up to two years to permit acquisition of service under this provision and, thereafter, eliminate the provision.

No further years of pensionable service will be provided for pre April 1, 1967 service after the grace period.

The Commission further recommends that post April 1, 1967 service be purchased at the current actuarial cost to provide the pension related to this service prior to credit being given for pre April 1, 1967 service. Flexible financing terms should be considered.

6.02 PURCHASE OF CONTRIBUTORY SERVICE

The Public Service (Pensions) Act

The Act states in section 8

> "Subject to this act and the regulations, pensionable service of an employee who was or became an employee on or after the first day of April, 1967, shall be counted from that date on which he commenced making contributions, whichever is the later."

The Act also states in Section 10

> "(1) Subject to subsection (2), the Lieutenant-Governor in Council may make regulations prescribing additional years of pensionable

> service that may be credited to an employee and the terms and conditions upon which such pensionable service shall be credited to him.
>
> (2) Nothing in this section or the regulations shall limit or restrict the crediting of additional pensionable service to an employee under the Civil Service Act or impair his position with respect to any pensionable service he was eligible, before April 1, 1967, to have credited to him on retirement under that Act, whether the Pension Plan or the existing plan applies to or in respect of that employee."

This section covers contractual time.

Section 24, covers the terms of purchase of additional service under Portability arrangements with the other three plans and as well, with the Memorial University of Newfoundland Pension Plan. It also covers Reciprocal arrangements with the Government of Canada, other Provinces, and regulations including employees of specific employers joining the pension plan.

Actuarial reports of the plan specify that contribution rates are insufficient to cover the current cost of service; therefore, all purchases of service, even at double the contribution rate, are adding to the unfunded liability to the extent of any shortfall.

Because individuals usually wait until they approach retirement to purchase service this reduces the opportunity for the plan to earn investment income on the additional contributions.

The Commission understands that the option to purchase unworked service will be revoked by regulation effective 31 December 1989.

The Commission recommends that pensionable service, other than regular worked service, be purchased at the actuarial cost to provide the related pension benefit at the time of purchase and with the terms of financing being flexible.

New members of the plan should be required to purchase the service at the time of joining the plan. Financing of the purchase should be based on interest rates closely related to market rates at the time of purchase.

The Uniformed Services Pensions Act
Purchase of Pre April 1, 1967

Section 7 of the Act has a provision similar to section 9 of the Public Service Pensions Act.

The comments and recommendations apply equally to both plans.

The only distinction between the plans is that the Minister provides approval for the Uniformed Services Plan whereas Cabinet provides approval for the Public Service Plan. The Commission considers Cabinet to be the most appropriate level of approval.

Pensionable service credited under the Teachers' Plan and the Public Service Plan may be instated in the Uniformed Services Plan by payment of any refund under the specific Act, plus interest.

On re-employment, prior pensionable service may be reinstated at a cost to the employee based upon contributions calculated on the salary at the time of re-employment, plus interest. An election to purchase this service must be made in writing to the Minister.

Section 16 of the Uniformed Services Pension Act provides for a one year advancement of the retirement age at a cost of double the normal contribution rate. These provisions generally provide for the purchase of service based on normal contribution rates.

This purchase of the final year at double the contribution rate is very significant from an actuarial cost perspective. Because of the proximity to retirement, the actuarial cost of the related pension benefit is considerably in excess of the contribution being made.

The Commission recommends that all purchases of pensionable service be made at actuarial cost to provide the related pension benefit.

The Members of the House of Assembly (Retiring Allowances) Act

Under this plan individuals may elect not to join the plan during the first term of office (up to five years) and continue to contribute to a prior plan or a Registered Retirement Savings Plan.

After the first term, the individual is required to join the plan and contribute the 7% required rate. Contributions for his first term are also required at this time. The employer matches this contribution.

Additional pensionable service is credited based upon reciprocal or portability arrangements with other plans, but only at a rate of 2% per annum.

Under Tax Reform, there will be considerable administration involved in handling individuals who elect to only commence contributing on their second term.

The Commission recommends that members be required to contribute from their date of first election to the House.

The Education (Teachers') Pensions Act

Teachers may obtain additional pensionable service in a variety of ways such as:

- Service as a Teacher
- Service as a Teacher with other employers including
  - Memorial University
  - Educational institutions outside the Province
  - Private schools
  - Armed Forces
- Service while not teaching including:
  - Teacher training - maximum of four years
  - Sick leave
  - Special leave - with salary or deferred salary
  - Sabbatical leave
  - President of the NTA or the Canadian Teacher Federation
  - Administration offices of the NTA
  - War Service
  - Service from other pension plans
  - Maternity or adoption leave
  - Absence while on legal strike

The cost to purchase past service can consist of:

- reinstatement of refund plus interest at 3%, or
- premiums due as if the teacher was employed under the Act - plus 3% interest from the date when the premium should have been paid.
- for non-worked service, premiums are based upon salary as if the teacher had been qualified at the time, plus 3% interest.
- for time off during a legal strike, double contributions are required based upon deemed salary at the time.

The purchase of this pensionable service may be completed at any time prior to retirement. The calculation of contributions based on prior years' salaries combined with a low interest rate, makes this deferral of payment extremely attractive to the employee. Unfortunately, it leads to increases in the unfunded liability of the Plan.

The purchase of unworked service, particularly teacher training time, is not comparable to other plans across the country. There is no provision to purchase teacher training time in any other jurisdictions and the option is not available to other professions within the remaining public plans.

The Commission recommends that purchase of non-worked service (except Approved Leaves of Absence and War Service) be eliminated from the Plan.

The Commission recommends that all future purchase of past service be made at the actuarial cost of the related pension benefit.

INDEXATION OF PENSIONS IN PAYMENT

7.01 Formal Program

7.02 The Current "Ad Hoc" System

Section 7.00

INDEXATION OF PENSIONS IN PAYMENT

7.01 FORMAL PROGRAM

The current plans do not formally provide for indexing pensions in course of payment.

If pensions were indexed at the rate of 100% of the increase in the Consumer Price Index, the most recent actuarial studies estimate that the contribution rates required to meet the cost of current service benefits would have to be revised as follows:

	Non Indexed Current Service Cost	Addition for Indexing	Indexed Current Service Cost
Public Service Pension Plan	9.9%	5.1%	15.0%
Teachers' Pension Plan	13.4%	6.4%	19.8%
Uniformed Services Pension Plan	22.1%	11.5%	33.6%
Members of the House of Assembly Pension Plan	42.6%	22.2%	64.8%

The unfunded liability under the Pension Plans would also be increased. Based on the latest actuarial reports, the unfunded liability would be increased by $1.0 billion bringing the total unfunded liability to $3.1 billion. This would require additional contributions to fully fund this liability as outlined below.

	Non Indexed Past Service Cost	Addition for Indexing	Indexed Past Service Cost
Public Service Pension Plan	9.6%	14.5%	24.1%
Teachers' Pension Plan	22.4%	33.2%	55.6%
Uniformed Services Pension Plan	33.1%	58.2%	91.3%
Members of the House of Assembly Pension Plan	NOT SPECIFIED		

While a formal indexing plan could be developed which provides for less generous benefits, such a plan would undoubtedly generate increased costs to the Province and its taxpayers. Recognizing that even meeting the basic costs of the Plan will place a burden on the Province and its taxpayers, the Commission is of the view that consideration of any formal indexing plan should be deferred until the funding target for basic benefits has been met.

7.02 THE CURRENT "AD HOC" SYSTEM

While the existing Plans do not provide for indexation, the practise of government has been to grant annual "ad hoc" increases in pensions at rates approximating the increase in the Consumer Price Index. This practice has increased the unfunded liabilities of the Plans and will ultimately lead to increased taxpayer costs.

Graph 7A indicates contributions, benefits and assets of the Provincial Pension Plans if current financing was continued for the next 20 years and benefits were not indexed. These charts show that deficiency payments in the amount of $255.0 million would be required to be paid by the Province.

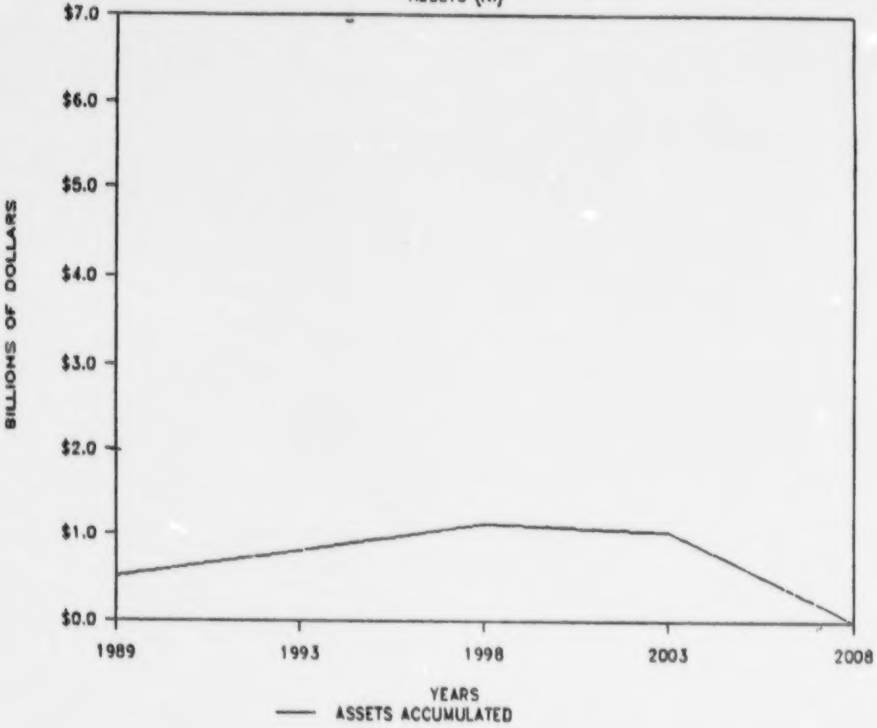
Graph 7B indicates contributions, benefits and assets of these Plans if benefits were indexed at 100% of the annual increase in the Consumer Price Index. These charts show that Provincial Deficiency Payments would increase to $1.8 billion or a further $1.55 billion from the amount otherwise required.

One of the significant disadvantages of the current "ad hoc" system is that the cost of these benefits is not shared with employees, except in their role as ordinary taxpayers. Most formal indexing programs require an equal sharing of cost between employees and the employer.

It should be noted that pensioners have other sources of retirement income including the Canada Pension Plan, Old Age Security, and certain supplements. These pension programs are fully indexed. Based on the current level of benefits, this means that most new pensioners have annual pensions in the amount of $10,000 which are fully indexed.

The Commission recommends that the practise of "ad hoc" indexation of pensions in payment be discontinued. Further "ad hoc" increases granted at the discretion of government should be met by payments from current account and not from the Pooled Pension Fund.

GRAPH 7A



PUBLIC PENSION PLANS

ASSETS (NI)

YEAR	MEMBER MATCHED	ADDITIONAL CURRENT SER	DEFICIENCY PAYMENT
1989	$102.3	$0.0	$0.0
1993	$132.9	$0.0	$0.0
1998	$176.1	$0.0	$0.0
2003	$216.4	$0.0	$0.0
2008	$288.4	$0.0	$255.0
TOTAL 20 YEARS	$3,737.5	$0.0	$255.0

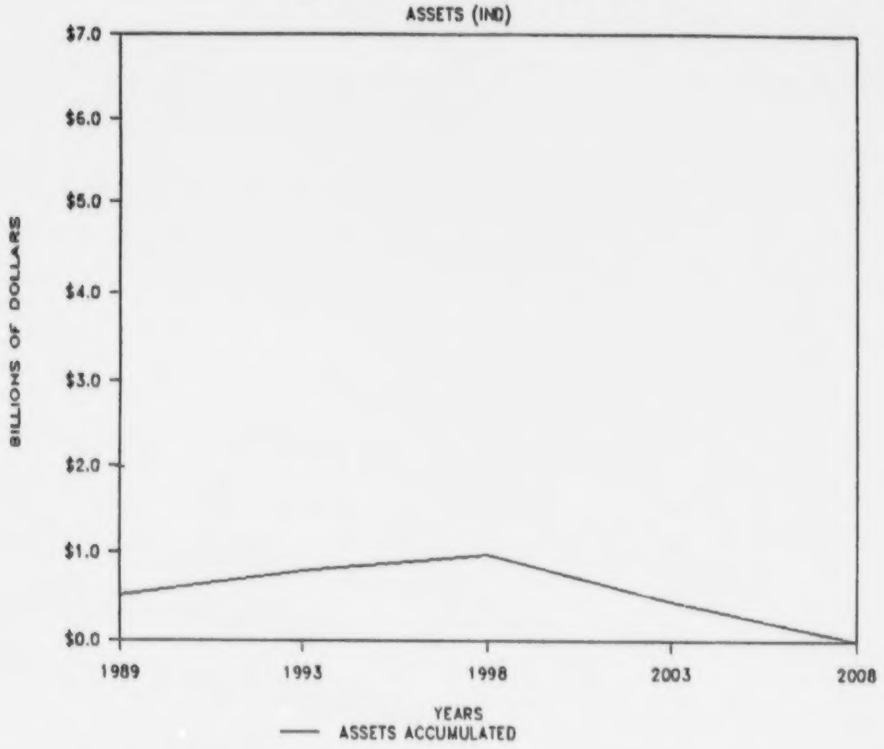
YEAR	PAST SERVICE	TOTAL CONTRIBUTION	INVESTMENT INCOME
1989	$0.0	$102.3	$41.4
1993	$0.0	$132.9	$65.4
1998	$0.0	$176.1	$79.8
2003	$0.0	$216.4	$77.8
2008	$0.0	$543.4	$0.0
TOTAL 20 YEARS	$0.0	$3,992.5	$1,223.2

YEAR	TOTAL INCOME	TOTAL BENEFITS	ASSETS ACCUMULATED
1989	$143.7	$88.6	$508.4
1993	$198.3	$114.9	$801.4
1998	$255.9	$205.5	$1,129.0
2003	$294.3	$388.7	$1,029.6
2008	$543.4	$698.9	$0.0
TOTAL 20 YEARS	$5,215.7	$5,669.0	

GRAPH 7B

PUBLIC PENSION PLANS

ASSETS (IND)



YEAR	MEMBER MATCHED	ADDITIONAL CURRENT SER	DEFICIENCY PAYMENT
1989	$102.3	$0.0	$0.0
1993	$132.9	$0.0	$0.0
1998	$176.1	$0.0	$0.0
2003	$216.4	$0.0	$0.0
2008	$288.4	$0.0	$616.6
TOTAL 20 YEARS	$3,737.5	$0.0	$1,802.9

YEAR	PAST SERVICE	TOTAL CONTRIBUTION	INVESTMENT INCOME
1989	$0.0	$102.3	$46.0
1993	$0.0	$132.9	$72.1
1998	$0.0	$176.1	$80.3
2003	$0.0	$216.4	$45.2
2008	$0.0	$905.0	$0.0
TOTAL 20 YEARS	$0.0	$5,540.4	$1,024.5

YEAR	TOTAL INCOME	TOTAL BENEFITS	ASSETS ACCUMULATED
1989	$148.3	$88.6	$513.0
1993	$205.0	$130.2	$794.7
1998	$256.4	$248.9	$989.0
2003	$261.6	$487.8	$441.0
2008	$905.0	$905.0	$0.0
TOTAL 20 YEARS	$6,564.9	$7,018.2	

INVESTMENT PROGRAM

8.01 Present Investment Policy

8.02 Investing in Marketable Securities

8.03 Separate or Commingled Fund (Role of Plan Sponsor)

Section 8.00

INVESTMENT PROGRAMS

8.01 PRESENT INVESTMENT POLICY

The authority for the present investment policy rests with the Minister of Finance and is delegated to the Pension Investment Committee. This committee has instituted an investment program, in conjunction with its advisors, that provides a reasonable rate of return for the pension plan under various economic scenarios. The investment program is documented, thorough, and working quite well.

Recent rates of return indicate a return on investment of approximately 13% for a one year period. This return is above average with a reasonable degree of risk.

It is the Commission's opinion that the Committee has, and is, performing the investment function well and the present investment policy is adequate in meeting the needs of the present and future pension program. The Committee has not found it necessary to identify in this Report other options investigated by them. The Commission is of the opinion that the structure currently in place in the Province could serve as a model to other Public Sector Plan Sponsors.

8.02 INVESTING IN MARKETABLE SECURITIES

Successful investments for retirement can only be judged over a long time horizon. History demonstrates that marketable securities have produced higher rates of return than non-marketable securities.

The recent Ontario task force on pensions has recommended a move from non-marketable government securities to marketable securities for their public pension plans. The underlying reason is that marketable securities should, in the long-term, provide a higher rate of return than non-marketable government securities.

This practise also increases the ability of the pension plan to pay the pension promised without reliance on the plan sponsor. The plan sponsor (government) may borrow its operating funds elsewhere in the form of non-marketable securities, and often at less cost than borrowing from the pension fund itself.

The resulting expected higher rate of return from investment in marketable securities will, in the long-term, impact positively on contribution rates of the employees and the plan sponsor.

In the Commission's view, the pension investment committee has shown considerable insight by investing in marketable securities.

The Commission recommends that the Pension Investment Committee continue its investment programs without outside interference.

8.03 SEPARATE OR COMMINGLED FUND (ROLE OF PLAN SPONSOR)

Based upon the Commission's conclusions and recommendations on the method of financing the unfunded liability, the Commission has concluded that the funds of each pension plan should be commingled. The Commission is of the view that certain administrative savings may be developed. Government, as plan sponsor, and with its guarantee, is ultimately responsible for the payment of pension benefits. The existence of a fund for one and all plans does not lessen this responsibility. The Commission concludes that the funds should continue to be controlled by the plan sponsor.

OTHER MATTERS

9.01 Organizational Relationships.

- Teachers' Benefit Administration Division, Department of Education
- Benefit Administration and Pension Policy Divisions, Department of Finance
- Personnel Policy Division, Treasury Board

9.02 Representation and Participation

9.03 Other Matters.

OTHER MATTERS

9.01 ORGANIZATIONAL RELATIONSHIPS

Benefit Administrations

Under the present organization, the responsibility for administration of benefits is shared between the Department of Education for teachers and the Department of Finance for all other employees.

The reasons for this structure are essentially historical and in the Commission's view, reasons for the separation are no longer valid.

In order to concentrate expertise and achieve certain cost savings, the Commission recommends that the responsibility for the administration of pension program benefits for all employees be placed with the Department of Finance.

Pensions Policy

Treasury Board has the overall responsibility for personnel policy. Historically, employees have not negotiated pension benefits with the exception of teachers. In recent times the concept of negotiation of a total compensation package has become acceptable.

Comparison of total compensation packages is difficult unless the pension arrangement is properly evaluated and standards set. Ignoring or using inappropriate values for pension costs could lead to total compensation costs well in excess of competitive levels.

The Commission has concluded that the four plans should be combined into one single plan for all employees having virtually identical benefit provisions. Based upon this philosophy, the Commission concludes that pensions policy should not be a negotiable item for specific employee groups.

The Commission recommends that overall responsibility for pension policy should be centralized either in Treasury Board or the Department of Finance. This matter should be studied further and reviewed internally by Cabinet.

9.02 REPRESENTATION AND PARTICIPATION

Employee Participation

The Commission has received representations from various employee groups and from representatives of various employers with employees in the plans. A major difficulty in obtaining the views of any group is a tendency to guard one's position because of bargaining considerations.

These pension plans are a significant asset for employees. In the case of the Province, they can become a significant financial drain. They are important in as much the promises that are made today may only have to be financed many years in the future.

The Commission believes that employee groups, employer groups, and government can reach a consensus on these very important issues providing equal access to information concerning the Plans is given to all parties.

Communication of information was highlighted as a major problem by most groups. The Minister of Finance should review this area to promote understanding and harmony with the employees covered under the pension plans. An effective communication program should be implemented. The Commission is of the view that such a program would eliminate the need for any additional Board or Committees to oversee the Plans.

Consideration should be given to the establishment of an Advisory Board consisting of representatives of employee groups, employer groups and pensioners. The responsibility of this Board would be advisory only.

9.03 OTHER MATTERS

Certain exgratia pension arrangements of the Province, such as those resulting from the Hartt arbitration award, should be thoroughly reviewed and subjected to the same financial requirements as other Provincial Pension Plans.

REPORT OF THE COMMISSION OF ENQUIRY ON PENSIONS

31 December 1989

Volume I

APPENDICES

10.01 Terms of Reference, Order in Council dated 31st Day of August, 1989

10.02 Comparison of Provincial Pension Plans

10.03 Comparison of Provincial and Federal Pension Plan Provisions for Public Service

10.04 Comparison of Provincial Pension Plan Provisions for Teachers

10.05 Comparison of Provincial and Federal Pension Plan Provisions for Uniformed Services

10.06 Comparison of Provincial and Federal Retirement Allowance Provisions for Legislative Assemblies

10.07 National Pension Reform Consensus

10.08 Federal Tax Reform for Pensions

10.09 Contacts

10.10 List of Individuals Appearing at Commission Hearings

10.11 Table of Contents, Volume II, Written Submissions Received

SECTION 10.00

APPENDIX 10.01

TERMS OF REFERENCE,

ORDER IN COUNCIL DATED 31ST DAY OF AUGUST, 1989

ELIZABETH THE SECOND, by the
Grace of God of the United
Kingdom, Canada and Her
Other Realms and
Territories, Queen, Head of
the Commonwealth, Defender
of the Faith.

LIEUTENANT-GOVERNOR

COMMISSION

TO:

GEORGE CUMMINS (CHAIRMAN)
DAVID EARLE
MICHAEL POWER

MINISTER OF JUSTICE

WHEREAS it appears desirable and expedient in the public interest and in the interest of prudent financial planning that an Inquiry be held to review all aspects of the Pension Plan of the Government of Newfoundland and Labrador;

AND WHEREAS actuarial reports indicate a substantial unfunded pension liability which will lead to depletion of the funds of these Pension Plans over the next several years.

NOW KNOW YE THAT under and by virtue of The Public Enquiries Act, Chapter 314 of the Revised Statutes of Newfoundland, 1970, WE by and with the advice of our Executive Council of the Province of Newfoundland, reposing our great trust and confidence in your knowledge, integrity and ability, have constituted and appointed and do by these Presents constitute and appoint you the said

GEORGE CUMMINS
DAVID EARLE
MICHAEL POWER

Pension Benefits

To review and comment on:

a) the adequacy of pension benefits available under all plans to ascertain if these benefits meet the objective of providing pensioners with a standard of living in retirement similar to that enjoyed while working.

b) the adequacy of benefits in comparison with other similar plans in Canada, including survivor benefits, medical and redundancy pensions, and the purchase of past service and contractual time.

c) the required changes to benefit programs resulting from the National Pension Reform Consensus as it impacts The Pension Benefits Act, and Federal Pension Tax Reform Proposal.

Contribution Rates

To review and comment on:

a) the adequacy of the present level of contributions to meet the prescribed benefits.

b) the desirability of a contribution formula which is integrated with the Canada Pension Plan.

c) the contribution rates of other similar plans in Canada and compare these with the Government of Newfoundland and Labrador Pension Plan.

Past Service Unfunded Liability

To review and comment on:

a) various methods for the funding of the past service pension liability within budgetary limits acceptable to the Province.

b) the percentage of the total pension actuarial liability which can reasonably be expected to be funded over the next 20 years given the Province's financial capability.

c) the amount of periodic special payments, if any, which can be reasonably expected to be paid by Government to meet this 20 year funding target.

Unworked Service

To review and comment on the policy of permitting plan members to purchase unworked service and the contribution rates at which such unworked service may be purchased.

Indexation of Pensions in Payment

To review and comment on:

a) the advantages or disadvantages of providing a formal indexation program to replace the existing annual "ad hoc" system.

b) the level of indexation benefits to be used in the indexation formula, if any, including the maximum or minimum limits in any given year.

c) the level of contribution and the cost-shared arrangements necessary to support this indexation program, if any.

d). the desirability of creating a separate indexation fund as compared to merging the indexation program, if any, with other benefits in each pension plan.

Investment Program

a) the adequacy of the present investment policy in meeting the needs of the present and future pension program including identifying other options, if any.

b) the advantages and disadvantages with respect to investing these pension funds in marketable securities, including the impact on contribution rates.

c) whether or not each plan's pension fund should be established separately or commingled; and whether or not such funds should continue to be at arms length from Government, as the plan sponsor.

Other Matters

To review and comment on:

a) the present organizational relationships of the Teachers' Benefit Administration Division in the Department of Education, the Benefit Administration and Pension Policy Divisions in the Department of Finance, and the Personnel Policy Division of Treasury Board.

b) the proper participation of various employee representative groups in the overseeing and decision making process of their respective plans, including the nature and membership of any committees or boards, which may be recommended.

c) Any other matters which in the view of the Commission, are relevant in establishing a successful pension benefit and funding program.

AND FURTHER, WE REQUIRE YOU, to bring conclusions and any recommendations which you consider desirable to improve the financial security of the Pension Plans and the present and future Pensioners.

AND WE DO, by these Presents, confer upon you, the power of summoning before you any witness or witnesses and of requiring such witnesses to give evidence orally or in writing upon oath or upon affirmation, and to produce such documents, submissions and things you may deem requisite to the full investigation of matters you are appointed to enquire into;

AND WE DO, by these Presents, authorize you to adopt such procedures and methods as you may from time to time deem expedient for the proper conduct of the Inquiry, and to sit at such times and places in public forum as you may from time to time decide.

IN TESTIMONY WHEREOF, we have caused these Our Letters to be made Patent and the Great Seal of Newfoundland to be hereunto affixed.

WITNESS: Our trusty and well-beloved the Honourable James A. McGrath, Member of Our Privy Council of Canada, Lieutenant-Governor in and for our Province of Newfoundland

AT OUR GOVERNMENT HOUSE in Our City of St. John's this 31st. day of August in the year of Our Lord one thousand nine hundred and eighty-nine and in the thirty-eighth year of Our Reign.

BY COMMAND,

REGISTRAR GENERAL

APPENDIX 10.02

COMPARISON OF PROVINCIAL PENSION PLANS

APPENDIX 10.02

COMPARISON OF PROVINCIAL PENSION PLANS

PUBLIC SERVICE PENSION PLAN	UNIFORMED SERVICES PENSION PLAN	TEACHERS' PENSION PLAN	M.H.A.'S RETIRING ALLOWANCE
Participation Includes all full-time employees of Govt and its agencies, hospitals, school boards, seasonal workers. Excludes: Part-timers, casual relief, temporary employees working less than 3 mos., employees of commissions. Contractual, unless stipulated in terms of contract.	**Participation** Includes all full-time employees of: Royal Nfld. Constabulary St. John's Fire Department Superintendent, Asst. Superintendents and every Commissioned and Correctional Officer of the Penitentiary. Excludes Casual, part-time and contractual	**Participation** - All teachers holding a valid certificate or license issued under the various Education (Training) Acts, - Teachers in a school or college funded under the Schools Act. - Substitute teachers employed in the same position for twenty or more consecutive days. Excludes: - Teacher who is a member of a religious order, unless he so elects. - Teacher contributing to another scheme, unless he so elects. - Teacher re-employed after 55 and who was absent from teaching 10 years prior, unless he so elects.	**Participation** Includes: Members elected to their first term and already participating in an employer sponsored plan or RRSP have an option Members elected to their 2nd term must join
Pensionable Service Includes: Service where in receipt of full salary. War service - WWII and Korean conflict. Pre'67 service with Govt or its agencies subject to LGC approval. No cost to employee to purchase. Prior service with Govt or agencies. Must be purchased if no contributions made or premiums refunded. Rate of purchase varies depending on nature of service. Contractual service if included as part of contract or, subsequent to termination of contract, if contract retroactivity cancelled by LGC. Subject to contributions based on salary at date of LGC approval. Leave w/o pay pensionable if premiums paid on deemed salary during leave, matched by current employer. Optional uncredited service may be purchased at 2 x regular contributions. No longer possible after 31/12/89. Service transferred under reciprocal or portability arrangements.	**Pensionable Service** Includes: Service while in receipt of full salary. War service. Pre'67 service if approved by Minister. Other public service if no refund of contributions received Leave without pay based on deemed salary during period of leave - Optional service to a maximum of 1 year for the purpose of advancing normal retirement age. Cost 2 x regular contributions based on current salary. - Service transferred under the Portability of Pensions Act.	**Pensionable Service** - Service as a teacher - Teaching service at MUN prior to MUN Act. - War Service - Subject to Ministerial approval, a period not exceeding five years of pensionable service teaching in an educational institution outside the Province. - Service credited under the other govt sponsored plans. - Subject to Ministerial approval, max. of 4 years teacher training. - Sick leave not exceeding 12 months in a four year period - Special leave with full pay. - Subject to LGC approval, a period not exceeding 10 years spent full time teaching of children of armed forces personnel. - Subject to Ministerial approval, any period spent teaching in a private school. - Period spent as a Admin. officer of the NTA if officer served as a teacher, teacher in training or civil servant prior to joining NTA - Any period as salaried, full-time President of NTA or the Canadian Teachers Federation if prior period spent as teacher, teacher in training or civil servant prior to joining NTA. - Sabbatical or education leave. - Maternity or adoption leave - Period of absence under deferred salary leave plan. - Absence while on legal strike.	**Pensionable Service** Includes: Service while a member. * Prior service as a public servant. Prior service as a member where a member has been re-elected after having previously being defeated or resigned. War service. * MP service (counts as MHA service). * Govt of Canada, Govt of another Province or any related Boards * Service transferred under the Portability of Pensions Act
Contributions Current rate integrated with CPP 6% to YBE, 4.2% to YMPE, 6% on excess Matched by employer. Based on normal salary. Excludes - overtime - bonuses Includes - contract pay - temporary assignment - retro pay	**Contributions** Same contribution rate as PSPP. Matched by employer. Same salary base as PSPP. Deductions cease upon attainment of 30 years pensionable service or the attainment of normal retirement age, ie. 55 for non commissioned officers, age 60 for commissioned officers.	**Contributions** Teachers with dependents - 6% of gross salary Teachers without dependents - 5% of gross salary Maximum 30 years contributions. Pensionable salary: - annual salary - bonuses (excluding C.O. Living) - salary while on deferred salary leave plan No integration with CPP Matched by employer	**Contributions** Member Contributions: 7% of sessional indemnity 7% of non-taxable travel allowance 7% of salary as parliamentary office holder In addition to member contribution, 7% of ministerial salary (Minister includes Speaker, Deputy Speaker & Leader of Opposition) All contributions matched by employer

PUBLIC SERVICE PENSION PLAN	UNIFORMED SERVICES PENSION PLAN	TEACHERS' PENSION PLAN	M.H.A.'S RETIRING ALLOWANCE
Deductions cease upon attainment of 35 years pensionable service or age 65.			
Refund Contributions Upon termination of service an employee may receive a refund of contributions under the following terms, unless the individual has reached age 45 and has 10 or more years of public service (in which case their pension contributions are locked-in). Interest payable at 5%. Refund paid in cash or rolled into RRSP or other RPP. Employee with greater than 10 years service and over age 45 has two options: 1) Deferred pension, payable at 60 on total service, or 2) refund of premium paid prior to 1 January 1987 (PBA), and a deferred pension payable at age 60 relative to service Jan. 1,1987 onward.	Refund Contributions Same provisions as PSPP.	Refund of Contributions Payable upon termination or death if teacher not vested or there is no survivor. If teacher has done pensionable service for a year or less prior to termination, premium only will be refunded. Where pensionable service exceeds one year, premiums will be refunded with interest compounding at 3% per year.	Refund Contributions Same provisions as PSPP.
Vesting and Locking-in Vesting period of 10 years. Once an employee has worked 10 years and attained age 45, contributions after January 1, 1987 are locked-in (PBA Act & Regulations).	Vesting and Locking-in Same as PSPP	Vesting and Locking-in 10 year vesting period. Subject to locking-in provisions of PBA ie 10/45.	Vesting and Locking-in Service in two general assemblies and five years service. Locking-in subject to PBA.
Indexation Currently "ad hoc" at the discretion of Cabinet. Increases paid from the fund. 1989 increase of 2.5%.	Indexation Same as PSPP.	Indexation Same as PSPP	Indexation Same as PSPP.
Calculation of pension Formula for pension calculation: Years of service x average annual salary of last sixty months x 2% x years of service (not to exceed 35). Note: any part of a calendar month counted as 1 month. Minimum Pension - 10% of average salary.	Calculation of Pension Formula for pension calculation: As per schedule in USPP Act*, specified percentage x final salary at date of retirement. Only complete years of service considered. A fraction of a year not counted. Years of service not to exceed 30.	Calculation of Pension Pension Formula Average annual salary (best 5 yrs. of final 7) divided by 45 x number of years of service to a max. of 30. 2.22% accrual rate 10 months teaching, constitutes one year service.	Calculation of Pension Fraction of a year service: - Greater than 1/2, full year credit. - Less than 1/2, no credit.

PUBLIC SERVICE PENSION PLAN

CPP reduction of benefit:

At age 65 pension reduced by the product of (lesser of final 5 year average or three years average YMPE x years of service since April 1, 1967 x .007).

If CPP received prior to age 65 - the reduction decreases by .5% for each month less than age 65.

Retirement Provision

Normal - age 60 with 10+ years of service.

Early - age 55 with 30+ years of service.

Deferred - payable at age 60 with 10+ years of service, or at age 55 with 30 years service.

Retirement date is the last day of the month in which the employee terminates employment.

UNIFORMED SERVICES PENSION PLAN

* Accrual rates:

yrs.	1 - 20	2%/yr	40%
	21 - 25	4%/yr	20%
	26 - 29	2%/yr	8%
	30	7%/yr	7%
			75%

Same CPP reduction provisions as PSPP using the 3 year YMPE average as the base.

Maximum pension - 75% of final salary.

Retirement Provision

Commissioned Officers

Normal - age 60 with 10+ years of service.

Optional - certain commissioned officers as designated by Act or the LGC may retire at age 55 with 30 years.

Other commissioned officers may retire with 25 yrs., no age restriction.

Non Commissioned

Must retire upon the attainment of age 55 or 25 yrs. service.

Deferred Pension - 10 yrs service-commissioned officer - age 60, 30 years service commissioned officer - age 55, non commissioned - age 55.

Advancement of retirement age:

Employee may have his normal retirement age reduced by one year by paying twice the normal contribution for that yr.

Approved by the Minister of Justice.

TEACHERS' PENSION PLAN

Minimum pension $2,700.

Retirement Provision

Normal Retirement

- Age 60

Optional Retirement:

- Age 55 with 30 years of pensionable service.
- Any age with 30 years of worked service.
- Any age with 29 years of worked service and 30 years pensionable with a reduced pension until age 55.

Deferred Retirement:

- Payable at age 60 if teacher has between 10 and 25 years of service
- Payable at age 55 if more than 25 years of service.

M.H.A.'S RETIRING ALLOWANCE

Formula for Benefit calculation (two tiered):

AVERAGE SALARY:

Member - average of 3 highest years sessional indemnity + travel allowance + parliamentary office holder salary.
Minister - average of 3 highest years ministerial salary.
Other - total of member & minister average salary.

BENEFIT CALCULATION:

Member - 5% x first 10 yrs. x average salary
+ 4% x next 5 yrs. x average salary
+ 2.5% x next 2 yrs. x average salary
Minister - same as member.
Other Public Service - 2% x yrs. of service x total average salary (Minister & Member). See definition of other service.

Maximum - 75% of total average salary

No reduction for CPP.

Retirement Provision

Served 5 years and 2 general assemblies and:

- age + service = 60 (55 for the Premier)

Deferred pension payable to vested, retired member when age + service equals 60 (or 55 for Premier).

PUBLIC SERVICE PENSION PLAN	UNIFORMED SERVICES PENSION PLAN	TEACHERS' PENSION PLAN	M.H.A.'S RETIRING ALLOWANCE
Disability Pension Retirement for medical reasons subject to Minister's approval. Application for medical retirement certified by two physicians, including the Provincial examiner. All sick leave credits must be used up prior to medical retirement. Disability must be of a permanent nature. Employee must have minimum 10 years service. No age restriction. If employee becomes fit for work, may be offered a post not less than the one from which he retired by LGC, within 1 year. Refusal may result in deferral of pension until age 60. Medical pension will be integrated with CPP if pensioner is in receipt of CPP disability benefits.	**Disability Pension** Same as PSPP except deferred pension payable at age 55	**Disability Pension** Teacher may retire if certified unable to perform duties efficiently as a result of a permanent incapacity. - Must have 10 years service. - No age restriction.	**Disability Pension** Certification of permanent disability required by two medical officers. Member would receive benefit equal to the greater of: - the accrued benefit or - 60% of annual pensionable salary Same provisions apply for a minister
Redundancy Pension LGC Board of Directors must declare a position redundant for reasons of reorganization to achieve greater economy or efficiency. No other position, equal in rank, salary or emoluments is available for the employee. Minimum 10 years service. No age restriction. If a redundant pensioner is offered an equal post within 30 days and refuses without reasonable cause, the pension may be cancelled.	**Redundancy Pension** Redundancy pension applies where position is abolished and, after 30 days, no position equal in rank, salary and emoluments is available	**Redundancy** No Provision.	**Redundancy Provision** N/A
Survivor Benefits Death in Service: Less than 10 years service or no survivors - refund plus interest payable to estate. More than 10 years service - benefit payable to surviving spouse or children under 18, or 24 if still in school, equal to 55% of employee's pension entitlement. Death of Pensioner 55% of benefit payable to spouse for life. If no spouse, then to surviving children under 18 (or 24 if in school) If no survivor, pension ceases Spouse includes common law spouse.	**Survivor Benefits** Same as PSPP.	**Survivor Benefits** Same as PSPP.	**Survivor Benefits** Survivor's pension Payable to spouse: the greater of 60% of the total pension the member was entitled to, or 25% of the last pensionable salary, and where there are children as well each child is entitled to 1/6 of the allowance payable to spouse The total of both the spouse and children's allowance not to exceed the total maximum benefit payable Children's allowance where no spouse. Each child entitled to 1/3 of spouse's entitlement. Total allowance not to exceed max. of entitlement of the member

PUBLIC SERVICE PENSION PLAN	UNIFORMED SERVICES PENSION PLAN	TEACHERS' PENSION PLAN	M.H.A.'S RETIRING ALLOWANCE
Purchase of Service Prior Service: Pre'67 service may be granted, at no cost, by L&C subject to buying all periods of service after April 1, 1967. If a refund was taken, prior service may be purchased at the current contribution rate applied to recommencement salary (ie. latest period of recommencement). Purchase of service with other organizations, as dictated by joining regulations. Payments may be made lump sum or over a period not to exceed the time being purchased at a financing cost of 6% p.a. Optional Service: Maybe purchased, using salary at date of election, at twice the normal contribution rate. If financing of payments is required, 6 1/2% interest is charged. Option no longer available after 31/12/89.	**Purchase of Service** Prior Service: Pre'67 full time service may be instated either free or if a gratuity or refund was paid, by repaying that amount. Post'67 service outside Uniform Services may be instated by repayment of refund + interest. If there is a break in service, pre'67 service may be granted under the above conditions subject to Ministerial approval. Prior service in USPP may be instated at a cost based on the salary at date of recommencement times the contribution rate plus an 6% financing cost if applicable. Election to purchase prior service must be made to Minister. Optional Service: No provision except for the one year that may be purchased to advance retirement age.	**Purchase of Service** All interest due on purchase of service is calculated at 3% compounded annually. Purchase of Prior Service: - Prior teaching service where refund taken: Reinstate refund + interest from date of withdrawal. - Prior public service: Reinstate refund + interest. - Other service (outside portability) teaching outside Province, armed forces teaching, private school: Premiums due as if teacher had been employed under the Act + interest from date when premiums would have been due. - Leave without pay: Premiums based on deemed salary. Non worked service: - Teacher training years: Premiums based on salary as if the teacher had been qualified at a Grade I level, or level of certificate held at time. - Matched by Province - Leave while on legal strike: Premiums based on deemed salary. Double the contributions required.	**Purchase of Service** Prior Service: Prior MHA Service that was refunded may be purchased by reinstating the refund or if monies paid to outside plan, by paying those monies into the government plan.
Re-employment of Pensioners Post age 60: Pension suspended upon re-employment and reinstated when employment is terminated. Pre age 60: Pension suspended and if re-employed in a pensionable position and pays contributions, the subsequent period will be added to the previous period in determining the final pension. If a redundant or disability pensioner becomes re-employed the subsequent period of service is added and the provisions of the first pension ie. redundancy or disability are cancelled. (To be amended in this way during the fall session).	**Re-employment of Pensioners** No provision to rehire pensioners after normal retirement age. Only rehired under normal retirement age if pension was due to medical reasons.	**Re-employment of Pensioner** Teacher who mandatorily retires at an age less than 65, may be extended subject to proof of good health and Ministerial approval. Pensioner who retired under medical provisions may be requested to have new medical and, if determined able to work, will have to resume employment. Failure to comply would result in suspension of pension. Re-employed retired teacher may have pension recalculated prior to final retirement if premiums are paid during re-employment period. Pensioned teacher may not be re-employed in a pensionable position if over age 65. Pensioner re-employed as an adult education teacher will not have pension suspended.	**Re-employment of Pensioners** Not applicable.
Portability There is full portability of service among the four govt. sponsored plans and the MHA plan. Transfer can only occur if no refund has been taken. Employees may move between plans with no loss of service. Any deficiency or surplus of contributions that may arise as a result of the transfer will be paid from or to the Consolidated Revenue Fund.	**Portability** Same as PSPP.	**Portability** Same as PSPP.	**Portability** Same as PSPP.

PUBLIC SERVICE PENSION PLAN

Reciprocity

There are reciprocal agreements established between the Province and most other jurisdictions and some agencies in other provinces.

Two types of reciprocal agreements are in effect:

Twice Contributions plus Interest

Exporting plan transfers out money equal to the employer's and employee's contributions plus interest.

Importing plan, using the employee's salary history, determines the contributions that would have been made under the importing plan and grants a bank of service to the employee based on the calculation. ie. If the importing plan had a higher contribution rate than the exporting plan, then the employee would be granted a lesser period of service.

The employee has the option to make up the shortfall.

Capital Value Transfer:

Exporting plan, using its own actuarial assumptions, calculates the actuarial value of the benefit earned by the employee and will transfer this amount.

Importing plan, using its actuarial assumptions calculates the amount required to instate the benefit, at the new salary in that plan.

The lesser value is transferred out and service is granted in full if sufficient funds are transferred, or on a pro-rata basis.

Employee has option to pay any shortfall.

Ex gratia program

The LGC may provide allowances to employees, former employees, survivors etc. as a result of an employee being injured in the discharge of his duty.

Ex gratia program may also be used to grant awards under other conditions:

- Widows of employees covered under older acts which had no survivor provision.
- To instate periods of prior service with defunct organizations.
- To instate periods of prior service with organizations where there is no mechanism to transfer service.
- All awards must be approved by the LGC.

All payments under ex gratia made from CF Services.

UNIFORMED SERVICES PENSION PLAN

Reciprocity

No reciprocal agreements in effect as the plan is not comparable when compared with other plans for similar groups to make such arrangements feasible.

Ex gratia program

Same as PSPP

All requests made through Cabinet.

(No provision in Act).

TEACHERS' PENSION PLAN

Reciprocity

Reciprocal agreements in place with Teachers' pension plans with all Provinces except B.C.

Reciprocal in place with Federal Govt as well.

All reciprocal agreements based on transfer of twice contributions plus interest.

Where a teacher has service for which premiums have been refunded, a reinstatement of premiums plus 3% interest will instate this service for transfer under a reciprocal agreement.

Ex gratia Program

Same as PSPP

M.H.A.'S RETIRING ALLOWANCE

Reciprocity

No reciprocal agreements in effect. Subject to LGC, the Minister of Finance may enter into such agreements with:

Govt. of Canada
Provincial Govts.
Nfld. Municipalities
Any corporation or institution.

Ex gratia program

No provision in Act but requests may be approved by LGC

PUBLIC SERVICE PENSION FUND

Fund Managers: Jarislowsky Fraser - Equities
Gryphon Investment - Equities
Connor Clark & Lunn - Equities
B.E. Haag - Shift Manager
First Canadian Capital Management - Small Cap. Fund
Royal Trust - Fixed Income
- Foreign
- Real Estate

Deficiency guarantee:

The consolidated revenue fund covers deficits in accordance with the Pensions Funding Act in each case where the Fund cannot meet the obligation of the plan.

Funds invested in accordance with Pensions Benefits Act.

Value of Fund - June 30, 1989 - $405 million.

To 30/03/89 - Annual Contribution - $62.0 Million
- Annual Benefits 40.0 Million
- Annual Expenses 2.5 Million
- Membership (Active) 25,000
- Pensioners 4,500

Administration

Pensions Division, Dept. of Finance

Pensions Investment Committee:
- Appointed by LGC
- Members include:
  1. Deputy Minister - Finance
  2. Secretary, Treasury Board
  3. ADM Finance
  4. ADM Education
  5. Director Pensions Administration
  6. Director Pensions Policy
  7. Manager Investments
  8. One outside rep.

Mandate of PIC:

- To administer all financial activities of all plans.

- To administer and advise the Minister on all policy matters relating to pensions.

- To appoint fund managers and actuaries.

- To review and comment on all pension issues.

Funding

Overseen by Minister of Finance.

Plan funded since 1980. Prior to that, all employee monies went to current revenue and all benefits paid from expenditure accounts.

Custodian of the fund - Royal Trust.

UNIFORMED SERVICES PENSION PLAN

To 31/12/88 - Contributions - $2.4 Million
- Benefits - 0.5 Million
- Expenses - .1 Million
- Membership - 850
- Pensioners - 207

Administration

Same as PSPF.

Funding

Contributions and employer match paid into fund since 1980.

Deficiency guarantee provision required every year to meet shortfall. 1988 - $2.1 million.

No fund balance.

TEACHERS' PENSION PLAN

Administration

Teachers' Pension Division, Dept. of Education.

Departmental/NTA Pensions Administration Committee. Set up under Collective Agreement that reviews all pension matters prior to implementation.

Other administration procedures same as PSPF.

The NTA Collective Agreement specifies that there will be no changes to the Pension Plan without the consent of the NTA.

Funding

Present plan started in 1966.

Funding began in 1980 with the Pensions Funding Act.

Operating of fund similar in all respects to PSPF.

M.H.A.'S RETIRING ALLOWANCES

Administration

Same as PSPF

Funding

Plan originated 1962.

Contributions and employer match paid into fund since 1980.

Deficiency guarantee required annually to meet shortfall in contributions over benefits. 1988 [illegible].

No fund balance

PUBLIC SERVICE PENSION FUND

Fund Managers: Jarislowsky Fraser - Equities
Gryphon Investment - Equities
Connor Clark & Lunn - Equities
R.E. Wong - Shift Manager
First Canadian Capital Management - Small Cap. Fund
Royal Trust - Fixed Income
- Foreign
- Real Estate

Deficiency guarantee:

The consolidated revenue fund covers deficits in accordance with The Pensions Funding Act in such cases where the Fund cannot meet the obligation of the plan.

Funds invested in accordance with Pensions Benefits Act.

Value of Fund - June 30, 1989 - $415 million.

To 31/12/88	- Annual Contribution	- $62.0 Million
	- Annual Benefits	40.0 Million
	- Annual Expenses	2.5 Million
	- Membership (Active)	25,000
	- Pensioners	4,500

UNIFORMED SERVICES PENSION PLAN

To 31/12/88	- Contributions	- $2.4 Million
	- Benefits	- 4.5 Million
	- Expenses	- .1 Million
	- Membership	- 850
	- Pensioners	- 307

TEACHERS' PENSION PLAN

To 31/12/88	Contribution	$28,709,000
	Benefits	$20,000,000
	Expenses	$470,000
	Membership	8,000
	Pensioners	1,200

M.H.A.'S RETIRING ALLOWANCES

To 31/12/88	- Contributions	- $474,000
	- Benefits	- 818,000
	- Expenses	- 17,000
	- Membership	- 52
	- Pensioners	- 59

APPENDIX 10.03

COMPARISON OF PROVINCIAL AND FEDERAL PENSION PLAN PROVISIONS FOR PUBLIC SERVICE

APPENDIX 10.03

COMPARISON OF PROVINCIAL AND FEDERAL PENSION PLAN

PROVISIONS FOR PUBLIC SERVICE

PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC	ONTARIO
Participation	Participation	Participation	Participation	Participation
- All regular permanent employees. - Excludes casual and part-time.	- Full-time employees over age 18. - Excludes casual and part-time.	- Full time over age 18. - Excludes casual and part-time.	- Regular Employees - full and part-time. - Excludes casual Employees	- Full time employees, Part-time who work 1/3 time. (Effective Jan.1/90 all status of employees will be included).
Pensionable Service	Pensionable Service	Pensionable Service	Pensionable Service	Pensionable Service
- All provincially related time. - War Service.	- All provincially related time. - War service. - Casual service over 6 months if purchased.	- All provincially related service. - War Service. - Leave w/o pay if purchased.	- Prior Service. - Leave without pay. - Authorized leave 1 day/ week.	- Prior non-contributory. - Leave without pay. - War Service. - Prior contributory. - Education leave.
Contributions	Contributions	Contributions	Contributions	Contributions
- 5.7% to YMPE. - 7.5% on excess. - Matched by employer.	- 5.4% to YMPE. - 7% on excess. - Matched by employer.	- 5.3% to YMPE. - 7% on excess. - Matched by employer.	- 7% of earnings in excess of 35% YMPE under QPP.	- 5.2% to YMPE - 7% on excess.

	PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC	ONTARIO
Refunds	Employee contributions + 5% interest.	Employee contributions + 6% interest.	Employee contributions + 4% interest.	Employee contributions + Caisse de depot rate.	Employee contributions + interest rate - (avg. 5 year chartered Bank TD rate).
Vesting & Locking-in	- 10 year vesting. - No locking-in.	- 2 year vesting. - 2 year locking-in effective 1 Jan. 1988.	- 5 year vesting. - No locking-in.	- 2 yr. vesting. - No locking-in unless there is an entitlement.	- 2 yr. vesting and locking-in.
Indexation	- CPI to 8%.	- $\frac{\text{Current CPI}}{\text{Prev. yr. CPI}} \times \text{CPI}$ to maximum 6%.	- CPI to 6%.	- $\text{CPI} \times \frac{\text{Current CPI}}{\text{Prev. yr CPI}} - 3\%$.	- Full CPI to 8% with carry over provision.

	PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC	ONTARIO
Pension Calculation	- 2% x best 3 yr avg. x yrs. of service. - CPP reduction: 0.7% x avg. 3 yrs (to YMPE) x yrs. of service since 1967.	- 2% x avg. of 60 months x yrs. of service. - CPP reduction: 0.7% x avg. salary (or avg. 3 yr. YMPE) x yrs. of service since 1966.	- 2% x avg. best 5 years x yrs. of service. - CPP reduction: 0.7% x service since 1966 x avg. salary to avg. 3 yr. YMPE.	- 2% x avg. of best 5 calender years x years of service. - CPP reduction: 0.7% x 5 yr. avg. YMPE x years of service after 1 Jan. 1966.	- 2% x best 5 cons. years avg. x years of service. - CPP reduction: 0.7% x avg. salary to YMPE x years of service since 1966.
Retirement Provisions	Normal- age 65. Early- 60 and 10.	Normal - age 65. Early - 60 and 2. 55 and 30.	Normal - 65 and 5. 60 and 30. Early - 60 and less than 30 (reduced by 5% for each yr. less than 65).	Normal - age 65. age 62 and 10 age 60 and 35 90 factor: age + service = 90 Early - less than 60 and less than 90 factor, .5% reduction for each month under age 60. - older than 60 but less than 90 factor .5% for each month retirement precedes either of age 65, age 62 and 10, or 90 factor.	Normal - age 65 and 2 - age 60 and 20 - age + service = 90 Early - 55 and 10 - reduced by .5% per yr. less than age 65.
Disability Provisions	No provision (LTD).	No provision (LTD).	- Disability must be severe ie. employee cannot be employed anywhere. - 5 yr. service required. - Benefit reduced in normal fashion.	N/A Uses a salary continuation program specified in collective agreement.	- 10 yr. service requirement. - Employee unable to be employed in public service and is entitled to accrued benefit to date of disablement.

PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC	ONTARIO
Redundancy Provisions - With 25 years service, employee would be eligible for redundancy pension.	**Redundancy Provisions** No provision.	**Redundancy Provisions** No provision.	**Redundancy Provisions** No provision.	**Redundancy Provisions** Will allow redundant employee to contribute to plan for 5 years beyond termination to enhance benefit.
Survivor Benefits - 50% of vested employees earned benefit payable to spouse. - 10% for each child up to 18 (or 21 if in school). Max. of 4 children. - If child mentally disabled, the 10% is payable for life.	**Survivor Benefits** - 60% to spouse. - 10% to dependant children to age 18 or 24 if in school.	**Survivor Benefits** - 50% of accrued benefits payable to spouse.	**Survivor Benefits** - 50% of employee or pensioner benefit entitlement to spouse.	**Survivor Benefits** - 2 year service requirement. - 50% of accrued benefit to spouse.
Purchase of Service Refunded Service - repay refund + interest. Prior non-contributory service - no purchase provision.	**Purchase of Service** Refunded Service - Repay refund + interest. Casual, non-contributory service - Purchase at time to time salary + interest.	**Purchase of Service** Refunded Service - Buy at recommencement salary. Prior, non-contributory service - Current salary. War Service - current. Leave w/o Pay - recommencement. MLA Service - current.	**Purchase of Service** Special Leave w/o pay purchased at 2 x contributions with interest charged after 6 months. All employees had until June 1989 to buy prior service.	**Purchase of Service** Prior non-contributory service at 2 x normal contributions. Pregnancy Leave w/o pay - normal contributions on current salary. War Service - twice normal contributions. Leave w/o pay - Educational - twice normal contributions. Prior service where refund taken - the lesser of refund + interest or premiums based on current salary.

	PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC	ONTARIO
	Re-employment of Pensioners	**Re-employment of Pensioners**	**Re-employment of Pensioners**	**Re-employment of Pensioners**	**Re-employment of Pensioners**
	- May be re-employed for 3 months with no loss of benefits. - Longer than 3 months, pension suspended and new pension recalculated.	- May be re-employed in non-pensionable position with no loss of benefits. - Otherwise, pension suspended and recalculated on final termination.	- May be employed in non-pensionable position with no loss of benefits. - Otherwise, pension suspended and recalculated on final termination.	- Pensioners have option to participate. If they participate pension is suspended. - If they work part time, then there is a partial loss of pension.	- Pensioner may be re-employed under conditions that new salary and pension not exceed former salary upon retirement. - If such is the case, the pension is partially suspended.
	Portability/Reciprocity	**Portability/Reciprocity**	**Portability/Reciprocity**	**Portability/Reciprocity**	**Portability/Reciprocity**
	Portability among govt related plans. Reciprocity based on 2 x contributions plus interest based on fund ROR.	Portability among govt related plans. Reciprocity based on 2 x contributions + interest (as established).	Portability among govt. related plans. Reciprocity based mostly on 2 x contributions + interest using 90 day T Bill rate. Most recently using a Hybrid approach ie. NB will transfer 2 x contributions + interest; the importing plan can calculate the actuarial value. Lesser amount transferred.	Recips are on a commuted value basis.	- Most recips currently on a twice contributions plus interest basis (fund ROR). - Some with the private sector are on a commuted value basis.

	MANITOBA	SASKATCHEWAN	ALBERTA	BRITISH COLUMBIA	FEDERAL GOVERNMENT
Participation	- Regular plan employees. - Temporary employees after 1 yr. - Casual and Part time who earn more than 1/4 YMPE for 2 consecutive yrs.	- All regular permanent and seasonal employees.	- All full time employees. - Seasonal and part time (if the employer so elects. - In the case of management, contractual employees have an option.	- All regular full time employees and part time employees earning greater than 1/2 the YMPE.	- All full time employees over 18 earning more than $900/p.a.
Pensionable Service	- Full time non-contributory immediately before entering plan. - Leave w/o pay if so elected prior to leave. - Prior contributory service if re-employed with 3 years.	- N/A as defined benefit plan was closed in 1977.	- Prior service while not a contributor. - War Service. - Leave w/o pay. - Prior service.	- Prior non-contributory service. - Leave w/o pay. - War service. - Prior service.	- Prior contributory service. - Prior non-contributory service. - War service. - Leave w/o pay.
Contributions	- 5.1% to YMPE. - 7% on excess.	- DBP entry age 18-30 7% - CPP 30-40 8% - CPP 40-60 9% - CPP - MPP 5% All matched.	Union - 4.375% to YMPE. - 6.25% on excess. - Matched by employer. Management - 5% of salary. - Employer pays 9%	Employee - 5.5% to YMPE. - 7% on excess. Employer - 8% to YMPE. - 9.5% on excess.	- 7.5% less CPP.

	MANITOBA	SASKATCHEWAN	ALBERTA	BRITISH COLUMBIA	FEDERAL GOVERNMENT
Refunds	Employee contributions + interest - (rate on 30 day interest bearing accounts).	- DBP - 7% interest on employee contributions. - MPP - interest on employee contributions at fund earnings rate.	- Employee contributions + 4%.	- Employee contributions plus interest based on the lesser of fund rate or non saving, chequing account rate.	- Employee contribution + 4%.
Vesting & Locking-in	- 2 yr. vesting and locking-in (effective 1 Jan 1990).	MPP - 1 yr. vesting 25 and 1 locking-in.	- 5 yr. vesting. - No locking-in unless age 65 or 85 factor has been attained.	- 10 yr. vesting. - No locking-in except where employee is within five years of max. retirement age.	- 5 yr. vesting. - Locking-in at 10 yrs. and 45 yrs. of age.
Indexation	- 2/3 CPI target indexing. - Separate account established therefore payment subject to value in account.	- N/A in MPP. - Ad hoc in Defined Benefit Plan.	- Ad hoc.	- Based on CPI and subject to availability of funds in indexation account. - Full indexation if there is sufficient funds to finance the increase on a terminally funded basis. - Otherwise a pro-rata increase is granted.	- Full CPI.

MANITOBA	SASKATCHEWAN	ALBERTA	BRITISH COLUMBIA	FEDERAL GOVERNMENT
Pension Calculation - 2% x avg. best 5 of 12 x years of service. - CPP reduction: .6% x avg. YMPE x yrs. of service since 1966.	Pension Calculation DBP - 2% x avg. 5 yr. x yrs. of service. - CPP reduction: .7% x avg. salary to YMPE x yrs. of service since 1966. MPP - Based on annuity purchase.	Pension Calculation Union - 2% x best 5 yrs. x yrs.1 of service prior 1 Jan 66. + 1.4% x 5 yr. YMPE x yrs. of service after 1 Jan 66. - 2% x best 5 in excess of YMPE after 1 Jan 66. Management - 2% x best 5 yrs. x yrs. of service.	Pension Calculation - 2% x avg. best 5 yrs. x yrs. of service. - CPP reduction: - .7% x avg. salary (YMPE) x yrs. of service after 1966.	Pension Calculation - 2% x avg. of best 6 yrs. x yrs. of service. - CPP reduction: - .7% x avg. YMPE (3 Yrs.) x service since 1966.
Retirement Provisions Normal - age 70 and 11 months - age 65 with 1 yr. - age 60 and 10 Early - age 55 and 10 - reduced by 1/16 per mo. for each mo. under age 60.	Retirement Provisions DBP Normal - age 65 and 5 - age 60 and 20 - any age and 35 Early - 55 and 30 (red) MPP 65 no minimum service 55 with 1 yr.	Retirement Provisions Union Normal - age 65 and 5 Early - Age 55 and 5 (red). - If employee less than age 65 or factor less than 85, there is a 2% reduction per year. Management - Age 55 and 5 with no reduction.	Retirement Provisions Normal - age 65 and 35 Early - age 60 and 10 - age 55 and 10 - Age to with less than 10 yrs. or ages 55-60 with 10-35 yrs., 5% reduction per yr.	Retirement Provisions Normal - age 60 and 5 Early - age 55 and 30 Optional - age 55 and 5 Reduced by 5% for each yr. less than age 60.
Disability Provisions - 10 yrs. service required . - Only available in case of severe disability where employee cannot be gainfully employed. - There is possible reduced benefit for partially disabled employee.	Disability Provisions DBP - 15 yrs. service. MPP - N/A.	Disability Provisions - 5 yrs. service required. - Unable to pursue gainful employment and medically certified. - Accrued benefit payable.	Disability Provisions - 10 yr. service required, age 60. - If no LTD entitlement and unable to be gainfully employed, accrued benefit payable.	Disability Provisions - 5 yrs. required. - Must be unable to be gainfully employed.

MANITOBA	SASKATCHEWAN	ALBERTA	BRITISH COLUMBIA	FEDERAL GOVERNMENT
Redundancy Provisions No provision.	Redundancy Provisions No provision.	Redundancy Provisions No provision.	Redundancy Provisions No provision.	Redundancy Provisions - If age 55 with 10 + yrs. of service, T. Board can waive reduction of benefit.
Survivor Benefits - 5 yrs. service requirement. - 60% of accrued benefit payable to spouse. - If spouse is 10 yrs. younger benefit is actuarially reduced.	Survivor Benefits DBP - 10 yrs. service. - 60% payable to spouse + 10 % to each child. MPP - 50% to J & L survivors	Survivor Benefits - 5 yr. service - joint and last survivor option. - Less than 5 yrs. service, spouse or child would get 2 x contributions + interest. - Estate would only get contributions + interest.	Survivor Benefits - 10 yr. service if less than 60. - 5 yr. service if over age 60. - Spousal pension is 60% unless option is waived by spouse.	Survivor Benefits - 5 yrs. service required. - Spouse entitled to 50%. - 20% of spouse's allowance to each child under 18 or 24 (if in school) Max of 4 children.
Purchase of Service Prior non-contributory based on current salary. Prior service where refund taken can reinstate refund within 3 yrs. After that there is no option available.	Purchase of Service N/A	Purchase of Service Leave w/o pay based on current salary and required to be purchased within 180 days. Prior contributory service - reinstate refund + 4%. War service - current salary. Prior non-contributory service - based on time to time salary. Both shares required.	Purchase of Service Prior non contributory service based on current salary. Leave w/o pay based on salary during leave. War service - can only be instated if employed within 3 yrs. of war. Prior contributory service: - If break is less than 3 yrs, payback refund + vest again. - If break is greater than 3 yrs., no reinstatement.	Purchase of Service Prior refunded - recommencement salary. Leave w/o pay: - Some forms instated at twice required contributions. - Sick, maternity & job related education instated at single rate. Prior non-contributory service: - Within 1 yr. at time to time. - Beyond one yr., salary at date of election.

MANITOBA	SASKATCHEWAN	ALBERTA	BRITISH COLUMBIA	FEDERAL GOVERNMENT
Re-employment of pensioners - No rules or restrictions.	Re-employment of pensioners DBP - Cease pension after 100 days re-employment. MPP - Suspend payments during re-employment then recalculate annuity.	Re-employment of pensioners - Must be retired for 3 mos. and come for no more than 4 mos. Cannot participate in plan. - If employment extends beyond 4 mos. pension is suspended.	Re-employment of pensioners - No conditions or restrictions.	Re-employment of Pensioners - If rehired on a full time basis, pension ceases and is recalculated on final termination.
Portability/Reciprocity - Most recips on a twice contribution plus interest basis. - Within the public sector there is a portability arrangement whereby no transfer takes place but employees get credit for service.	Portability/Reciprocity All recips with: DBP - Based on 2 x contributions + interest. MPP - Based on balance accrued to employee.	Portability/Reciprocity - All recips based on twice contributions + interest at 4%.	Portability/Reciprocity - Arrangements with other provinces based on twice contributions + interest. - New agreements will be based on a transfer of actuarial reserve where each plan keeps the related labilities.	Portability/Reciprocity - All recips currently at twice contributions + interest at fund rate.

APPENDIX 10.04

COMPARISON OF PROVINCIAL PENSION PLAN PROVISIONS FOR TEACHERS

APPENDIX 10.04

COMPARISON OF PROVINCIAL PENSION PLAN PROVISIONS

FOR TEACHERS

	PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC	ONTARIO
Pensionable Service	- War Service. - Private School Service. - Leave w/o pay. - Other Public Service.	- War Service. - Private School Service. - Special leave w/o pay. - 1 yr pre service university study. - Other Public Service.	- War Service. - Leave w/o pay. - Public Service.	- War Service. - Private School Service. - Leave w/o pay. - Public Service.	- War Service. - Private School Service. - Leave w/o pay. - Public Service.
Contribution Rates	- 7.5% integrated with CPP. - Matched by employer.	- 7.52 integrated with CPP. - Matched by employer.	- 7.5% integrated with CPP. - Matched by employer.	- 7% of salary in excess of 35% of YMPE (QPP). - Matched by employer.	- 7.9% integrated with CPP. - Matched by employer.
Refunds of Premiums	- Refund of employee contributions + interest at 4%.	- Refund of employee contributions + interest at 6%.	- Employee contributions + 6% interest.	- Employee contributions + interest based on Caisse de depot rate.	- Employee contributions + interest specified by PBA (avg. 5 yr. chartered bank TD rates).
Vesting & Locking-in	- 10 yr. vesting. - No locking-in.	- 2 yr. vesting. - Effective Jan/88 locked-in if entitled to benefit.	- 5 yr vesting with no locking-in.	- 2 yr. vesting, no locking in unless entitled to benefit.	- 2 yr. vesting and locking in.

	PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC	ONTARIO
Indexation	- CPI to 8% maximum.	- CPI to maximum 6%.	- CPI to maximum 6%.	- CPI less 3%.	- Full CPI to 8% with provision to carry forward excess.
Pension Calculation	- 2% x avg. best 5 x yrs. of service. - CPP reduction: - .7% x avg. 5 yrs. to YMPE avg. x years of service since 1967.	- 2% x avg. best 5 yrs. x yrs. of service. - CPP reduction: - .7% x avg. salary up to avg. YMPE x yrs. of service since 1966.	- 2% x avg. best 5 consecutive x yrs. of service. - CPP reduction: - .7% x avg. salary to YMPE.	- 2% x best 5 yrs. avg. x yrs. of service. - CPP reduction: - .7% x avg. 5 yr. YMPE x yrs. of service after 1 Jan 1966.	- 2% x best 5 yrs. avg. x yrs. of service. - CPP reduction: - .7% x avg. annual salary to avg. YMPE x yrs. of service since 1966.
Retirement Provisions	- Age 60 with 10 yrs. - Age 55 with 30 yrs. - Normal age 65.	- Age 65 with no minimum. - Age 60 with 2 years. - Age 55 and 30. - 35 years of service with no age restriction.	- Age 65 and 5. - Age 60 and 30. - Age + service = 90.	- Age 65 and 2. - Age 62 and 10. - Age 60 and 35. - Age + service = 90. - Early retirement available on a reduced basis (.5%/mo. reduction).	- Age 65 and 2. - Age 60 and 20. - Age + service = 90. - Age 55 and 10 reduced by 5% per yr. less than age 65.

PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC	ONTARIO
Disability Provisions - 10 yrs. service required. - Disabled as a teacher. - Accrued benefit paid.	Disability Provisions - 10 yrs. service required. - Total disability.	Disability Provisions - 5 yr. service required. - Disability must be total.	Disability Provisions No provision.	Disability Provisions - 10 yr. service. - Disability must be total. - Accrued benefit payable.
Redundancy Provisions No provision.	Redundancy Provisions No provision.	Redundancy Provisions No provision.	Redundancy Provisions No provision.	Redundancy Provisions No provision.
Survivor Benefits - 50% to spouse and 10% to each child to a maximum of 4. - Employee must be vested.	Survivor Benefits - 50% to spouse and 10% to each child to a maximum of 4. - Employee must be vested.	Survivor Benefits - 5 yr. service. - 50% of accrued benefit payable to to spouse or children under 18 (or 24).	Survivor Benefits - 50% of accrued benefit payable to spouse.	Survivor Benefits - 2 yr. service required. - 50% payable to spouse or dependent children.
Purchase of Service **Refunded service:** - Reinstate refund plus interest. **Leave w/o pay:** - Based on leaving salary. **Prior non-contributory service:** - At time to time salary.	Purchase of Service **Refunded service:** - Reinstate refund plus interest. **Leave w/o pay:** - Based on leaving salary. **Prior non-contributory service:** - At time to time salary.	Purchase of Service **Refunded service:** - Reinstate refund + interest. **Leave w/o pay:** - Based on recommencement salary. **Prior non-contributory service:** - Based on current salary.	Purchase of Service **Prior service:** - No provision to repurchase. **Leave w/o pay:** - Employee pays twice the required contributions.	Purchase of Service **Prior refunded service:** - Reinstatement of refund + interest. **Leave w/o pay:** - Current salary. **Prior non-contributory service:** - Twice normal contributions.

	PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC	ONTARIO
Re-employment of Pensioners	No provision.	- Up to 94 1/2 days per year without penalty.	- Up to 80 days per year without penalty.	- No restrictions if under age 65.	- 20 days/year.
Portability/Reciprocity	- Agreements in place with most provinces based on 2 x contributions plus interest.	- Agreements in place with most provinces based on 2 x contributions plus interest.	- Agreements in place with most provinces based on 2 x contributions plus interest.	- Agreements in place with most provinces based on 2 x contributions plus interest.	- Agreements in place with most provinces based on 2 x contributions + earnings.

	MANITOBA	**SASKATCHEWAN**	**ALBERTA**	**BRITISH COLUMBIA**
Pensionable Service	- War Service. - Study leave.	- War Service. - Private School Service. - Leave of absence. - Public Service.	- War Service. - Private School Service. - Leave of absence. - Public Service.	- War Service. - Leave of Absence. - Public Service.
Contribution Rates	- 7.3% integrated with CPP. - Matched by employer.	DBP - 7.85% integrated with CPP. - Matched by employer.	- 5% integrated with CPP. - Employer pays 50% of pensions.	- 7.6% integrated with CPP. - Employer pays 10.3%
Refunds of Premiums	- Employee contributions + interest based on interest paid on 30 day interest bearing accounts.	DBP - Contributions + 7%. MPP - Contributions + fund rate of interest.	- Employee contributions + interest at 3 1/2%.	- Employee contributions + interest at the lesser of net earned rate or non saving, chequing rate.
Vesting & Locking-in	- 2 yr. vesting and locking in 1/1/90.	DBP N/A. MPP - 1 year vesting. - Locking in at 1 yr. and 25 yrs. of age.	- 10 year vesting. - No locking in unless 65 or 85 factor.	- 10 year vesting except if within 5 years of maximum retirement.

MANITOBA	SASKATCHEWAN	ALBERTA	BRITISH COLUMBIA
Indexation - 2/3 CPI target indexing. - Separate account established therefore payment subject to value in accounts.	**Indexation** DBP - Ad Hoc. MPP - N/A.	**Indexation** - Ad Hoc indexing.	**Indexation** - Based on CPI and subject to availability of funds in indexation account.
Pension Calculation - 2% x best 5 yrs. service x yrs. of service. - CPP reduction: - 0.6% x avg. YMPE x yrs. of service since 1966	**Pension Calculation** DBP - 2% x avg. 5 yr. x yrs. of service. - CPP reduction: - 0.7% x avg. salary to YMPE x yrs. of service since 1966. MPP - Based on annuity purchase.	**Pension Calculation** - 2% x best 5 yr. avg. x yrs. of service. - CPP reduction: - 0.7% x avg. salary to YMPE x yrs. of service since 1966.	**Pension Calculation** - 2% x best 5 yr. avg. x yrs. of service. - CPP reduction: - 0.7% x avg. YMPE x service since 1966.
Retirement Provisions - Age 65 and 2. - Age 55 and 10 with no reduction.	**Retirement Provisions** DBP - Age 65 and 5. - Age 60 and 20. - 30 yrs. with no age requirement. MPP - Age 65 and 1. - Age 60 and 20. - 30 yrs. with no age requirement.	**Retirement Provisions** - Age 65. - Age 55 and 30. - Age 55 and 10 (reduced).	**Retirement Provisions** - Age 60 and 10. - Age 55 and 35. - Age 55 and 10 (reduced).

MANITOBA	SASKATCHEWAN	ALBERTA	BRITISH COLUMBIA
Disability Provisions No provision.	**Disability Provisions** DBP - 10 yr. service - Accrued benefit payable. MPP N/A.	**Disability Provisions** - 10 yrs. service required. - Accrued benefit payable if determined disabled as a teacher.	**Disability Provisions** - 10 yrs. service required. - Accrued benefit payable if disabled as a teacher.
Redundancy Provisions No provision.	**Redundancy Provisions** No provision.	**Redundancy Provisions** No provision.	**Redundancy Provisions** No provision.
Survivor Benefits - Compulsory joint life annuity.	**Survivor Benefits** DBP - 10 yrs. service. - 60% payable to spouse + 10% for each child to maximum 25%. MPP - Joint life and last survivor option (50%).	**Survivor Benefits** - Joint Life and last survivor option.	**Survivor Benefits** - Joint life and last survivor options.
Purchase of Service Prior refunded service: - Reinstatement of refund + interest earned by fund + any actuarial deficiency. Prior non-contributory service: - Based on current salary.	**Purchase of Service** DBP Prior refunded service: - Reinstatement of refund + interest.	**Purchase of Service** Prior refunded service: - Reinstatement of refund + interest. Leave w/o pay: - Based on deemed salary. Prior non-contributory service: - Based on time to time. - Both shares required.	**Purchase of Service** Prior refunded service: - Reinstatement of refund + interest (no reinstatement after 3 yrs. absence). Leave w/o pay: - Based on deemed salary. Prior non-contributory service: - Based on current salary.

MANITOBA	SASKATCHEWAN	ALBERTA	BRITISH COLUMBIA
Re-employment of Pensioners - No restrictions.	Re-employment of Pensioners - No restrictions.	Re-employment of Pensioners - 120 days/year.	Re-employment of Pensioners - No restrictions.
Portability/Reciprocity - Agreements in place with most provinces based on 2 x contributions + earnings.	Portability/Reciprocity - Agreements in place with most provinces based on 2 x contributions + earnings.	Portability/Reciprocity - Agreements in place with most provinces based on 2 x contributions + earnings.	Portability/Reciprocity - Most arrangements based on 2 x contributions + earnings or value of deferred pension.

APPENDIX 10.05

COMPARISON OF PROVINCIAL AND FEDERAL PENSION PLANS PROVISIONS FOR UNIFORMED SERVICES

APPENDIX 10.05

COMPARISON OF PROVINCIAL AND FEDERAL PENSION PLANS

PROVISIONS FOR UNIFORMED SERVICES

	HALIFAX, N.S. (POLICE & FIREFIGHTERS)	ST. JOHN, N.B. (POLICE & FIREFIGHTERS)	ONTARIO (OMERS)	R.C.M.P.
Participation	- All permanent employees. - Police & firefighters are members of the municipal plan.	- All permanent employees. - Police & firefighters are members of the municipal plan.	- All permanent full time employees. - Toronto Metro Police have participation in OMERS since July 1, 1968.	- Compulsory for all employees.
Contribution Rates	- 6% to CPP. - 7% on excess. - Matched by employer.	Employee: - 8.5% Employer: - 6.5% to YMPE. - 7.5% on excess + $135,000 per year.	- 6.5% to YMPE. - 8% on excess. - Matched by employer.	- 7.5% integrated with CPP.
Refunds	- Employee contributions plus interest at 6%.	- Employee contributions + interest at 6%.	- Employee contributions + interest based on rate specified by PBA.	- Employee contributions + interest at 4%.
Vesting & Locking-in	- 10 year vesting and locking in.	- 10 year vesting.	- 2 yr. vesting and locking in.	- 10 yr. vesting. - Locking in at 10 yrs. and age 45.

	HALIFAX, N.S. (POLICE & FIREFIGHTERS)	ST. JOHN, N.B. (POLICE & FIREFIGHTERS)	ONTARIO (OMERS)	R.C.M.P.
Indexation	- 2% automatic at age 65. - Other indexing subject to availability of funds in index account. - If possible, full indexing.	- Ad hoc.	- Full CPI.	- Full CPI.
Pension Calculation	- 2% x avg. best 5 years x years of service. - CPP reduction: Lesser of: CPP benefit or 19% of pension.	- 2% x avg. best 3 years x years of service. - No reduction for CPP.	- 2% x avg. best 60 months x years of service. - CPP reduction: .7% x avg. 3 yr. YMPE x service since 1966.	- 2% x avg. best 6 yrs. x years of service. - CPP reduction: .7% x avg. YMPE x yrs. of service since 1966.
Retirement Provisions	**Normal:** 60 and 10 **Early:** Age + service = 85 (No reduction).	**Normal:** 65 and 10 **Early:** Age + service = 85.	**Normal:** Age 60 with no service requirement. **Early:** Age 50 and 30. Also use 85 factor with 5% per year reduction.	**Normal:** Age 60 (depends on rank). **Early:** Force members may retire after 25 years of service or as early as 20 years with a reduction. Officers stay till age 60 or may go at 55 and 30.

HALIFAX, N.S. (POLICE & FIREFIGHTERS)	ST. JOHN, N.B. (POLICE & FIREFIGHTERS)	ONTARIO (OMERS)	R.C.M.P.
Disability Benefits	Disability Benefits	Disability Benefits	Disability Provisions
- 5 years service required. - Entitled to accrued benefit. - Must be disabled to do present job.	- 1 yr. service required. - Not job related: 70% of avg. best 3 yrs. - Job related: 60% of salary at date of disability. - Employee disabled to do own job.	- May apply for immediate pension or remain on LTD program.	- 10 yrs. service required. - Benefit based on entitlement to date.
Survivor Benefits	Survivor Benefits	Survivor Benefits	Survivor Benefits
- 60% to spouse and 10% to each child to a maximum of 4.	- 60% of benefits to spouse.	- 60% to spouse and max. 15% to eligible children.	- 50% for spouse and max. 20% for dependent children.

	VANCOUVER (POLICE & FIREFIGHTERS)	CALGARY (POLICE & FIREFIGHTERS)	WINNIPEG (FIREFIGHTERS)	WINNIPEG (POLICE)
Participation	- Compulsory after 6 months of service. - Police and firefighters are members of the municipal plan.	- Compulsory for all full time employees. - Both groups administered by the City of Calgary but funded by Alberta Treasury.	- Compulsory after 2 months service. - If employee is earning 25% of YMPE for two consecutive years.	- Compulsory
Contribution Rates	Employee: - 6% to YMPE, 7.5% on excess. Employer: - 8.3% employees less than age 45. - 16.6% employees over age 45. - Police & firefighters may also contribute 2% matched 2 1/2% towards a supplementary annuity.	Firefighters Employee: 4.375% to YMPE, 6.25% on excess. Employer: 5.375% to YMPE, 7.25% on excess. Police Employee: 6.45% integrated with CPP. Employer: 7.55% integrated with CPP.	Employee: - 6 1/2% to YMPE, 7 1/2% on excess. Employer: - Pays the costs of the plan but not less than a match of the employee's contributions. - AVC's are permitted.	Employee: - 7.305% of earnings. Employer: - Pays the costs of the plan but not less than a match of the employee contributions.
Refunds	- Employee contributions + interest based on a non chequing, savings account rate.	- Employee contributions + interest at 4%.	- Employee contribution + interest based on chartered bank savings accounts rate.	- Employee contributions + interest as determined by the Board of Trustees.
Vesting & Locking-in	- 10 year vesting. - No locking in.	- No vesting unless entitled to a pension.	- 5 year vesting.	- 5 year vesting.

VANCOUVER (POLICE & FIREFIGHTERS)	CALGARY (POLICE & FIREFIGHTERS)	WINNIPEG (FIREFIGHTERS)	WINNIPEG (POLICE)
Indexation - Full CPI subject to availability of fund in indexing account.	**Indexation** - Ad hoc.	**Indexation** - Full CPI subject to availability of funds in indexing account.	**Indexation** - Full CPI subject to availability of funds in indexing account.
Pension Calculation - 2% x best 5 yrs. of service x yrs. of service. - CPP reduction: .7% x avg. salary x yrs. of service to 35 yrs.	**Pension Calculation** - 2% x best 5 yrs. of service prior to 1 Jan 66 + 1.4% x 5 yr. YMPE x yrs. of service after 1 Jan 66. - 2% x best 5 in excess of YMPE after 1 Jan 66.	**Pension Calculation** Pre 65: - 2% x avg. best 6 x yrs of service. Post 65: - 1.4% x avg. YMPE x yrs. of service + 2% x balance of avg. earnings x yrs of service.	**Pension Calculation** - For service prior to 1 Jan 66 2% x avg. best 5 yrs. x yrs of service. + For service post 1 Jan 66 1.4% x avg. 5 yr. YMPE x yrs. of service. + 2% x avg. over YMPE x yrs. of service.
Retirement Provision Normal: Age 60 Early: Age 55 and 10 Age 50 and 30 - Reduced benefit available if less than 55 or less than 30 yrs. (5%/yr. reduction).	**Retirement Provisions** Police Normal: Age 60. Early: 25 yrs. of service 55 and 5. Firefighters Normal: Age 55. Age + service = 85.	**Retirement Provision** - Age 55 or 30 years of service.	**Retirement Provisions** Normal: Age 60. Early: 25 yrs. service. Age 55.

VANCOUVER (POLICE & FIREFIGHTERS)	CALGARY (POLICE & FIREFIGHTERS)	WINNIPEG (FIREFIGHTERS)	WINNIPEG (POLICE)
Disability Provisions - If no suitable job available due to disability, service to date of disability is increased by 1/2 and accrued benefit paid.	**Disability Provisions** - Benefit entitlement accrued at time of disability.	**Disability Provision** - Benefit entitlement at time of disability with service credited as if employee had worked to age 65. - Disability must be total.	**Disability Provisions** - 15 yrs. service required. - Total disability. - Accrued benefit payable.
Survivor Benefits - Surviving spouse entitled to JL and LS. - If employee dies, serivce is increased by 1/2 to determine spousal benefit.	**Survivor Benefits** Police - Spouse entitled to 65% of accrued benefit. Firefighters - Spouse entitled to JL and LS benefit.	**Survivor Benefits** - 50% survivor benefit to spouse. - If there are dependent children, the pension to spouse will be increased by 20% up to a total pension of 50% of spouses pension.	**Survivor Benefits** - 66 2/3% survivor benefit to spouse.

APPENDIX 10.06

COMPARISON OF PROVINCIAL AND FEDERAL RETIRING ALLOWANCE PROVISIONS FOR LEGISLATIVE ASSEMBLIES

APPENDIX 10.06

COMPARISON OF PROVINCIAL AND FEDERAL RETIRING ALLOWANCE

PROVISIONS FOR LEGISLATIVE ASSEMBLIES

	PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC	ONTARIO
Participation	Compulsory.	Compulsory.	Compulsory	Compulsory	Compulsory
Pensionable Salary	- Salary as minister. - Sessional Indemnity. - Tax Free Allowances.	- Salary as minister. - Sessional Indemnity. - Tax Free Allowances.	- Salary as Minister. - Sessional Indemnity.	- Salary as Minister. - Sessional Indemnity.	- Salary as minister. - Sessional Indemnity.
Contribution Rates	- Employee 8.5% - Employer 5.5 times employee contributions.	- Employee 8% of all remuneration. - Matched by employer.	- Member 9.4% indemnity. - Minister 6% salary. - Matched by employer.	- 8.2% to YMPE. - 10% on excess. - Employer pays all benefits.	- 10% of remuneration. - Employer pays such sums as required to defray the costs.
Refunds	- Contributions + interest. - Based on fund earnings.	- Contributions + 4% interest	- Contributions with no interest.	- Contributions plus interest based on Caisse de depot rate.	- Contributions plus interest at 6%.

PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC	ONTARIO
Vesting & Locking-in	**Vesting & Locking-In**	**Vesting & Locking-in**	**Vesting & Locking-in**	**Vesting & Locking-in**
- 8 years service or two general assemblies.	- 5 years and two general assemblies.	- 10 sessions.	- 5 years.	- 5 years.
Indexation	**Indexation**	**Indexation**	**Indexation**	**Indexation**
- CPI to 8%	- CPI to 6%	- CPI to 6% - Applies only to pensions being paid 1 Jan. 81. - Proposed change in effective date 1 Jan. 89.	CPI - 3%.	- Ad hoc.
Pension Calculation	**Pension Calculation**	**Pension Calculation**	**Pension Calculation**	**Pension Calculation**
- 75% of contributions as MLA (to a max. of avg. last 5 yrs. indemnity) + 75% of contributions as a minister (to a max. of 50% of highest annual salary).	- MLA 5% x yrs. of service x avg. 3 yr. indemnity + - Ministers 5% x yrs. of service x avg. 3 yr. salary + 5% x yrs. in receipt of expense allowance x avg. 3 yr. allowance. - Years not to exceed 15.	- Member 4.5% x avg. 3 yr. indemnity x no. of sessions. - Minister 3% x avg. 3 yr. salary x yrs. of service as minister.	- For Service 1/1/83 - 31/12/87: 4% avg. best 3 yrs. indemnity x yrs. of service (max. 70%) - .7% CPP factor. - For Service after 1/1/88: 3 1/2% x indemnity x service.	- 5% of avg. of best 36 mos. remuneration x yrs. of service (not to exceed 15).

PRINCE EDWARD ISLAND	NOVA SCOTIA	NEW BRUNSWICK	QUEBEC	ONTARIO
Retirement Provisions - Age 50 with 8 yrs. service or 2 general assemblies.	Retirement Provisions - Age 55 with 5 years service and two general assemblies.	Retirement Provisions - No age requirement. - Must serve 10 sessions.	Retirement Provisions - Age + service = 65 and 1) Service to 31/12/87 and 60 2) Service after 1/1/88 and age 50. - Reduced pensions available.	Retirement Provisions - 5 years service. - Age + service = 55. - Reduced benefit available for less than the 55 factor.
Disability Provisions - Must be elected twice and have served 1 General Assembly. - Permanent disability and unable to be gainfully employed. - Accrued benefit payable.	Disability Provisions - Vested employee who is totally disabled is entitled to accrued benefit.	Disability Provisions No provision.	Disability Provisions No provision.	Disability Provisions - No provision.
Survivor Provision - Spouse entitled to 50% of vested members benefit.	Survivor Provision - Age 55 and vested. - Spouse is entitled to 60% benefit and 10% for each dependent child.	Survivor Provision - 10 yrs. service required. - 50% benefit payable to spouse.	Survivor Provision - Survivor of pensioner entitled to balance of 10 yrs. payments or to a lump sum commuted value.	Survivor Provision - No minimum service required. - Spouse entitled to the greater of: 25% of indemnity or 60% of the earned allowance and 10% for each child to max. of 3.

	MANITOBA	SASKATCHEWAN	ALBERTA	BRITISH COLUMBIA	FEDERAL GOVERNMENT
Participation	Optional	Compulsory Members elected after April '79 must join Money Purchase Plan (MPP).	Optional	Optional	Compulsory
Pensionable Salary	- Salary as Minister. - Expense allowance. - Sessional Indemnity.	- Salary as Minister. - Sessional Indemnity. - Tax free allowances.	- Salary as Minister. - Sessional Indemnity.	- Salary as Minister. - Sessional Indemnity. - Expense allowance.	- Sessional Indemnity. - Ministerial Salary or Senatoria salary (if so elected by member).
Contribution Rates	- 7% by employee. - All benefits paid from the Consolidated Fund.	- 9% of all remuneration. - Employer matches and pays shortfall.	- 7 1/2% of salaries. - Matched by employer.	- 9% of salaries. - Matched by employer.	- M.P. 11% of salary. - Sen. 6% of salary. - Matched by employer.
Refunds	- Employee contributions + interest at 3%	- No refund payable with more than 1 year service.	- Employee contributions + interest at 4%.	- Employee contributions + interest at non chequing savings account rate.	- Employee contributions + 4%.

	MANITOBA	**SASKATCHEWAN**	**ALBERTA**	**BRITISH COLUMBIA**	**FEDERAL GOVERNMENT**
Vesting & Locking-in	- Eight years or 3 legislative assemblies.	- 1 year vesting and locking in under MPP.	- 5 year vesting.	- 7 yrs. or two legislative assemblies.	- 6 years service.
Indexation	- Full CPI.	- Ad hoc for DB Plan. - No provision under MP Plan.	- Ad hoc.	- Full CPI subject to availability of funds.	- Full CPI.
Pension Calculation	- 3% x avg. final 5 yrs. salary x yrs. of service. - Max. benefit 70% of avg. salary.	- DBP 1/25 x avg. 4 yr. indemnity x yrs. + 1/35 x avg. 4 yr. salary x yrs. Reduced for CPP. - MPP Based on annuity purchase.	- 4% x best 3 yrs. x yrs. of service to max. of 20.	- 5% x avg. best 4 yrs. x yrs. of service to a max. of 16.	- Member 5% x avg. best 6 yrs. sessional indemnity x yrs. of service. - Senator 3% x avg. sessional indemnity x yrs. of service. - Minister & Senator 5% x avg. best 6 yrs. salary x yrs. of service. - Maximum 15 yr. service.

MANITOBA	SASKATCHEWAN	ALBERTA	BRITISH COLUMBIA	FEDERAL GOVERNMENT
Retirement Provisions - Eight years or 3 assemblies and age + service = 55.	Retirement Provisions - DBP No service requirement. Payable age 50. - MPP Same.	Retirement Provisions - Age 55 and 5. - Reduced benefit available if less than age 55.	Retirement Provisions - Age 55 or age + service = 60.	Retirement Provisions - No age requirement. - 6 yrs. of pensionable service.
Disability Provisions - No provision.	Disability Provisions - No provision.	Disability Provisions - After 5 yrs. service, JL and LS benefit for members. - Ministers covered by LTD.	Disability Provisions - No provision.	Disability Provisions - No provision.
Survivor Provision - Vested employee: Spouse entitled to 60% benefit.	Survivor Provision - 1 yr. service required. - DBP 60% benefit to spouse. 10% to each child to max. of 4. - MPP Annuity purchased.	Survivor Provision - 5 yr. service required. - Spousal benefit based on option of pension entitlement with JL and LS options.	Survivor Provision - Spouse of vested member entitled to JL and LS.	Survivor Provision - Spouse: 3/5 of benefit entitleme - Child: 1/10 of benefit entitleme Max. of 3 children.

APPENDIX 10.07

NATIONAL PENSION REFORM CONSENSUS

APPENDIX 10.07

NATIONAL PENSION REFORM "CONSENSUS"

Under the heading of Pension Benefits in the Terms of Reference, the Commission of Enquiry on Pensions is required to review and comment on "the required changes to benefit programs resulting from the National Pension Reform Consensus as it impacts The Pension Benefits Act". However, there is considerable doubt as to what is meant by the "National Pension Reform Consensus". Is there a "national consensus" at all?

British Columbia does not have any Pension Benefits legislation whatsoever; nor does Prince Edward Island, although it does have proposed legislation based on the 1987 Ontario legislation, which is being completely re-written. New Brunswick has proposed legislation but, again, it is based on the 1987 Ontario legislation.

By designation in the statute, Newfoundland has accepted that certain provinces, including Nova Scotia and Ontario, have "substantially similar" legislation to that in effect in Newfoundland (Regulation 20, Newfoundland Pension Benefits Act). As well, there are Newfoundland residents who are employed by corporations headquartered in those jurisdictions and perhaps the Pension Benefits Act and Regulations should be consistent.

In any event, there are six topics on which there is supposed to be substantial agreement in terms of the National Pension Reform Consensus. In the following paragraphs, these six items are reviewed in an attempt to determine the direction of Newfoundland. Ontario and Nova Scotia are used as the benchmark in the review because they have the newest legislation. However, earlier comments about the proposed revision in Ontario and the innocuous situations in British Columbia, New Brunswick and Prince Edward Island must be considered in terms of whether there is a so-called "national consensus" at all.

The six items alleged to have general agreement are:

(a) Full Time Employee Membership

This appears to mean that all full-time employees must be eligible for membership in the pension plan subject to certain eligibility requirements. Ontario and Nova Scotia have interpreted the national consensus to mean that where a pension plan is established for a class (undefined in Ontario) of employees, full-time employees are entitled to become members after completing 24 months of continuous full-time employment (subsection 34 (2), Ontario Pension Benefits Act and 37 (2), Nova Scotia Pension Benefits Act). The pension plan can reduce the 24-month qualifying period and Nova Scotia recognizes this possibility statutorily (subsection 37 (2), Nova Scotia Pension Benefits Act).

The first requirement for full-time employee membership is establishment of a pension plan by the employer for a class of employees. In Ontario the term "class" is undefined and could be restrictive in terms of the coverage of full-time employees. However, Nova Scotia uses the terminology "prescribed class" (subsection 37 (2), Nova Scotia Pension Benefits Act) and the prescribed class is described in such a way as to prevent most types of restriction (subsection 38 (1), Nova Scotia Pension Benefits Regulations).

To date, Newfoundland does not have a minimum qualifying period for membership in a pension plan but, for that matter, neither do British Columbia, New Brunswick or Prince Edward Island, although the latter two may be proceeding towards such a requirement (subsection 29 (4), New Brunswick Pension Benefits Act not yet proclaimed) but New Brunswick follows Ontario and does not follow the "prescribed class" of Nova Scotia.

(b) Part-time Employee Membership

This appears to mean that all part-time employees are entitled to become members of a pension plan, subject to certain eligibility requirements. Ontario and Nova Scotia have interpreted this to mean that part-time employees of a class (undefined in Ontario) for which a pension plan has been established are entitled to become members after, in Nova Scotia, earning not less than 35 percent of the "year's maximum pensionable earnings" (as defined in the Canada Pension Plan Act, $27,700 in 1989) in the immediately preceding two calendar years, or in Ontario, the lesser of the 35 percent and 700 hours or, in both Nova Scotia and Ontario, some other approved equivalent basis (subsection 37 (3), Nova Scotia Pension Benefits Act and subsection 32 (3), Ontario Pension Benefits Act).

Once qualified as a member, both Ontario and Nova Scotia preclude dismissal from the pension plan where the member is employed continuously on less than a full-time basis and has earnings or time less than the qualifications for admission to a part-time plan (section 38, Nova Scotia Pension Benefits Act and section 33, Ontario Pension Benefits Act). This dismissal restriction would appear to apply to members of a full-time pension plan as well.

Ontario and Nova Scotia permit the establishment of a pension plan for part-time employees separate from the pension plan for full-time employees provided the plan for part-time employees awards pension and other benefits "equivalent" to those provided for full-time employees in the same "class" (section 40, Nova Scotia Pension Benefits Act and section 35, Ontario Pension Benefits Act).

At present, Newfoundland does not have minimum requirements for part-time employees but then neither do British Columbia, Prince Edward Island and New Brunswick. New Brunswick has indicated (sections 29 and 31, New Brunswick Pension Benefits Act not yet proclaimed) that it plans to follow the Ontario and Nova Scotia lead. However, New Brunswick excludes from membership in all pension plans employees of a bargaining unit who have "elected to negotiate other benefits in place of pension benefits" (section 30, New Brunswick Pension Benefits Act not yet proclaimed).

(c) Vesting and Locking In

Allegedly this means that the vesting and locking in period for pension plans was to be reduced gradually from the general requirement of 10 years to 5 years by 1989 and then to 2 years by 1992. Nova Scotia and Ontario have 2 years vesting and locking in periods (sections 43 and 68, Nova Scotia and sections 38 and 64, Ontario Pension Benefits Acts). This means that a member of a pension plan would not be entitled to a refund of contributions after 2 years of membership but would be eligible for a deferred pension.

Newfoundland at present has a 10 year requirement and locking in is only required after 10 years at 45 years of age. Again, the previous comments about British Columbia, Prince there is a problem in that Alberta, who presumably had agreed to go along with the so-called "national consensus", subsequently decided to go off on its own. Alberta has a 5 year requirement (sections 23 and 27, Alberta Employment Pensions Act).

While there may or may not be a "consensus" on this issue, it would appear reasonable to move the vesting and locking in period to two years. This will ensure that a person who works for a minimum of 2 years will be entitled to at least some pension at retirement. As well, it will reduce the need for portability.

(d) **Minimum Employer Contributions**

Allegedly, this requires that an employer must provide at least 50 percent of the cost of a vested pension. Ontario and Nova Scotia have a requirement that a member's contribution to the cost of the commuted value of the pension or deferred pension shall not exceed 50 percent and a member is entitled to a refund above same (subsections 47 (3) and (4), Nova Scotia and subsections 40 (3) and (4), Ontario Pension Benefits Acts).

Newfoundland does not have such a requirement, nor do British Columbia, New Brunswick and Prince Edward Island. New Brunswick has indicated it will follow the so-called national consensus but again, there is a divergence from Ontario and Nova Scotia in that the 50 percent requirement only applies where the pension plan does not fit a percentage (subsection 55 (3), New Brunswick Pension Benefits Act not yet proclaimed).

(e) **Post Retirement Survivor Benefits**

Allegedly, this requires a minimum pension to be paid to a surviving spouse equivalent to 60 per cent of the pension otherwise payable to the member. Nova Scotia and Ontario provide such a requirement (subsection 52 (3) and (4), Nova Scotia and subsections 45 (3) and (4), Ontario Pensions Benefits Acts) through the mechanism of a joint and survivor pension, except where the spouses are separated on the date that payment of the first instalment of the pension is due. This requirement, in the case of Ontario and Nova Scotia, does not apply either to pensions commenced prior to 1988 nor does it apply where the spouses waive the requirement (subsection 54 (1), Nova Scotia and 47 (1), Ontario Pension Benefits Acts).

The Newfoundland Pensions Benefits Act does not provide for minimum post retirement survivor benefits, nor do British Columbia, New Brunswick and Prince Edward Island. New Brunswick has indicated it will proceed with a provision similar to Ontario and Nova Scotia (section 41, New Brunswick

Pension Benefits Act not yet proclaimed) with the survivor entitled to a minimum of 60 percent and the 60 percent minimum may be waived by the spouses (subsection 41 (4)). New Brunswick does not require that the spouses live together to get the survivor benefits.

The Newfoundland public sector plans provide a 55 percent minimum survivor pension. However, 60 percent and even 100 percent can be accommodated without any changes by permission being given to the member to elect options based on the 55 percent. This will permit members to choose, based on individual and family circumstances, which is the preferable method of dealing with the situation.

(f) Pre-Retirement Survivor Benefits

Allegedly, this requires that where a deceased member of a pension plan would have been eligible for a deferred pension at the time of death, the surviving spouse is entitled to a minimum lump sum payment of 60 percent of the commuted value of the deferred pension on the death of the member. This is the requirement in Nova Scotia (section 56,Pension Benefits Act) whereas Ontario provides a minimum of 100 percent of the commuted value. Spouses who are living separate and apart at the date of death are not eligible in Ontario (subsection 49 (3),Ontario Pension Benefits Act) but in such case the payment would be made to the estate of the deceased member (subsection 49 (7)).

Nova Scotia provides an offset to the 60 percent requirement where the value of a group life insurance policy benefit is not less than 60 percent of the commuted value of the deferred pension (subsection 56 (3), Pension Benefits Act). Ontario provides a similar offset to the 100 percent requirement so long as the payments are attributable to amounts paid for by the employer (subsection 49 (11), Pension Benefits Act).

The Newfoundland Pension Benefits Act does not provide, at present, for minimum pre-retirement survivor benefits, but then neither do British Columbia, New Brunswick and Prince Edward Island. New Brunswick, however, has indicated it will follow the Nova Scotia model by requiring a 60 percent lump sum and does not have a living together requirement and does permit a group life insurance offset where the insurance premiums are paid wholly or in part by the employer (section 43, New Brunswick Pension Benefits Act not yet proclaimed).

Although the Newfoundland Pension Benefits legislation does provide a minimum pre-retirement survivor benefit, the public service plans provide a 55 percent pension (not lump sum) minimum except for the Members of the House of Assembly plan, which is the greater of 60 percent and 25 percent of the last "pensionable salary", defined to include the 50 percent non-taxable allowance.

The National Pension Reform Consensus was apparently negotiated by officials from jurisdictions across Canada. The officials apparently thought, at least at one point in time, that they had an agreement with regard to the six topics discussed above. However, the substance of such agreement appears to have dissipated, at least in the legislation reviewed, even on these six topics.

Furthermore, there are fourteen additional topics but in the documentation provided to this Commission, these are described as "needing clarification". It would appear that not only these fourteen require clarification but also the six that allegedly were agreed upon.

The fourteen items described as "needing clarification" are:

1. Pensions Divisible on Marital Breakdown
2. Sex Differentiation
3. Plan Surplus
4. Flexible Retirement Age
5. Portability
6. Portability for Past Service
7. Portability Vehicles
8. Interest on Employee Contributions
9. Benefits Upon Remarriage
10. Disclosure
11. Employee Representation
12. Multi-Employer Plans

13. Canada and Quebec Pension Plan Offset
14. Old Age Security Offset

These items are discussed in the following paragraphs.

1. Pensions Divisible on Marital Breakdown

This appears to mean that, on marital breakdown, the member's actuarial pension benefits would be divisible, with the non-member spouse eligible for up to 50 percent of the benefits earned prior to the marital breakdown. Ontario and Nova Scotia (sections 1 and 52, Ontario Pension Benefits Act and section 61, Nova Scotia Pension Benefits Act) have provisions which permit a division of the pension on marital breakdown between spouses and those cohabiting for not less than three years (or in Ontario those "in a relationship of some permanence if they are the natural or adoptive parents of a child").

To date, Newfoundland does not have a provision dealing with division of pensions on marital breakdown. Nor do British Columbia, New Brunswick and Prince Edward Island. New Brunswick, however, has indicated it will proceed towards such a provision (sections 1 and 44, New Brunswick Pension Benefits Act not yet proclaimed) following the Ontario lead but will not allow for the "relationship of some permanence (for) adoptive parents".

Previously it was mentioned that, on marital breakdown, the division is the accrued pension benefits. This may sound relatively straightforward in that it suggests a relatively simple calculation. However, D.S. Rudd, in "Pensions and Family Law: An Actuary's Approach", points out there are three methods of valuing pensions, viz. Family Law Act Methods, Increase in Benefit, Value at Separation Method and the Pro-rated Method, which can result in large variations in the value.

As an aside, there have been divisions of pensions on marital breakdown which have been accepted by the Department of Finance in the case of the public service plan, and have been recognized by the courts of Newfoundland at least as early as 1981 (Hierlihy v. Hierlihy (1981) 33 Nfld. and PEIR 1).

2. Sex Differentiation

Apparently this means that the sex of members and beneficiaries shall not be taken into account in determining benefits, member contributions or eligibility for membership. Ontario and Nova Scotia have adopted such a provision, but they do allow employer contributions to vary dependent on sex, and discrimination is permitted for periods of employment prior to 1987 (section 53, Ontario Pension Benefits Act) or 1988 (section 59, Nova Scotia Pension Benefits Act).

To date, the Newfoundland legislation does not have a provision dealing with sex differentiation, but neither do British Columbia, New Brunswick and Prince Edward Island. However, New Brunswick has indicated it will follow the Ontario and Nova Scotia lead, but only for employment after the commencement of the section (sections 46 and 47, New Brunswick Pension Benefits Act not yet proclaimed).

3. Plan Surplus

This topic apparently deals with the ownership of any surplus over and above what is required to be in a plan in order to actuarially provide the benefits promised under the plan. The right of employers to remove surpluses to fund other operations is vexing (in view of inflation) and varied, depending on which legislative jurisdiction is involved (as is pointed out by J. M. Sourish in "Pension Surplus: Who is Entitled To It", pages 24 and 25).

A related question to the ownership issue is the question of contribution holidays. What this means is that the employer does not physically take any cash out of the plan if there is a surplus, but does not make any further contributions until the surplus is used up. But, here again, there does not appear to be any consistent approach.

Newfoundland at present permits contribution holidays (Regulation 2 (13), Newfoundland Pension Benefits Act) but the permission of the superintendent is required for an employer to withdraw surplus (Regulation 18 (2)).

4. Flexible Retirement Age

What this apparently means is that retirement of up to ten years before the normal retirement age should be allowed at not less in value than the commuted value of the deferred pension accrued at that time, payable immediately. Ontario and Nova Scotia have provisions allowing for same (section 42, Ontario Pension Benefits Act and section 49, Nova Scotia Pension Benefits Act).

At present, the Newfoundland legislation does not have an early retirement provision nor do British Columbia, New Brunswick and Prince Edward Island. However, New Brunswick has indicated it will provide such a provision following the Ontario and Nova Scotia lead (section 40, New Brunswick Pension Benefits Act not yet proclaimed).

5, 6 & 7. Portability

In this area there are three related topics. Portability in general requires transfers between plans operated by different employers. Where there was portability, members would be entitled to move their pension and service from one employer to another. However, equity requires that the plans be similar before transfer would be permitted, and even within jurisdictions, variances exist between plans operated by different employers.

Because of such variances, one of the concepts being considered by administrators is "Portability Vehicles", one of which is the Locked-In Retirement Account or LIRA. When a member leaves one employer, the funds available will be placed in a LIRA which will not be available to the member until retirement. We have been advised that such vehicles are available, if demanded, from national financial institutions but they are not commonly known.

8. Interest on Employee Contributions

This apparently means that interest on employee contributions to a defined benefit plan must meet certain minimum realistic interest rates. In Ontario and Nova Scotia, the bases for calculating the minimum rates is found in the regulations, and is either the rate reasonably earned by the fund or the average of five-year personal fixed income term chartered bank deposit yields as determined from the Canadian Socio Economic Information Management (CANSIM) Bank of Canada Review over a "reasonably recent period", not exceeding 12 months and to be paid not less frequently than annually (section 21, Ontario Pension Benefits Regulations and section 23, Nova Scotia Pension Benefits Regulations).

At present, Newfoundland has not established similar minimums, but neither have British Columbia, New Brunswick and Prince Edward Island. New Brunswick has indicated it will do so, but as the Pension Benefits Act of New Brunswick has not been proclaimed, regulations (in which the Ontario and Nova Scotia minimums are found) are unavailable for comment although the enabling provision is similar (section 54, New Brunswick Pension Benefits Act).

9. Benefits Upon Remarriage

This provision apparently was to provide that a spouse of a member did not lose entitlement to the survivor benefits on remarriage. Ontario and Nova Scotia have provisions providing this (section 48, Ontario Pension Benefits Act and section 55, Nova Scotia Pension Benefits Act) but the Ontario and Nova Scotia provisions only relate to pensions being paid on 12 January 1987 and 1988 respectively.

To date, Newfoundland does not have such a provision, nor do British Columbia, New Brunswick and Prince Edward Island. New Brunswick has indicated it will follow the lead of Ontario and Nova Scotia (section 42, New Brunswick Pension Benefits Act not yet proclaimed), although it will only apply when the section is proclaimed.

10. Disclosure

This appears to mean that certain information will be made available to prospective, present and past members of a pension plan. Nova Scotia and Ontario require the administrator of the pension plan to provide information to an employee who is eligible to join a pension plan, either 60 days before or 60 days after, becoming eligible to join, setting out an explanation of the plan and the rights and obligations of members (section 31, Nova Scotia Pension Benefits Act and section 29, Regulations and section 26, Ontario Pension Benefits Act and section 34, Regulations). In addition, where it is proposed to amend a pension plan and the amendment could reduce a person's benefits, rights or obligations under the plan, prior notice of 60 days, with an explanation of the amendment to each person affected, is required (section 32, Nova Scotia Pension Benefits Act and section 30, Regulations and section 27, Ontario Pension Benefits Act and Section 35, Regulations). Annual reports to members are also required and terminated members are required to be given a statement of benefits, rights and obligations (sections 33 and 34, Nova Scotia Pension Benefits Act and sections 28 and 29, Ontario Pension Benefits Act). Persons with an interest in a plan are given rights to inspect information in the possession of the administrator and the superintendent (sections 35 and 36, Nova Scotia Pension Benefits Act) or Commission (sections 30 and 31, Ontario Pension Benefits Act).

The Newfoundland Pension Benefits Act requires an employer to provide each prospective member with an explanation of the plan and the rights and duties of the employee on or before the day the employee is eligible to join the plan (subsection 23 (1)). Within six months after a plan is amended, an employer is required to provide the foregoing information to each affected member (subsection 23 (3)). Each employer is required to provide terminated employees with a statement of immediate or deferred benefits (subsection 23 (4)).

British Columbia, New Brunswick and Prince Edward Island do not have disclosure provisions, while New Brunswick has indicated it will follow the Nova Scotia and Ontario lead (sections 23 - 28, New Brunswick Pension Benefits Act not yet proclaimed).

11. Employee Representation

This appears to mean that members and former members are to have an involvement of some sort in the administration of the pension plan. Ontario provides for the establishment, by members and former members, of an advisory committee to monitor, make recommendations and promote awareness and understanding of the plan (section 25, Ontario Pension Benefits Act), except where there is a multi-employer plan or where one of the administrators of the plan is appointed by members of the plan.

Nova Scotia does not provide for an advisory committee and neither do Newfoundland, British Columbia, New Brunswick and Prince Edward Island. New Brunswick has indicated it will follow the Ontario lead (sections 21 and 22, New Brunswick Pension Benefits Act not yet proclaimed).

12. Multi-Employer Plans

This apparently means that the pension legislation should provide both the mechanics for establishing and the special rules required for a pension plan in which the members are employees of more than one employer. The Ontario and Nova Scotia Pension Benefits Acts provide such a mechanism.

Newfoundland does not have special provisions relating to multi-employer plans, but that does not mean that such plans are prohibited. In fact, the Public Service Pension Plan is a multi-employer plan. British Columbia, New Brunswick and Prince Edward Island do not have any special rules either; however, New Brunswick has indicated it will follow the Ontario and Nova Scotia lead (New Brunswick Pension Benefits Act not yet proclaimed).

13. Canada/Quebec Pension Plan Offset

This apparently permits the integration of Canada/Quebec Pension Plan benefits with the benefits received from an employer-sponsored pension plan. Full Canada/Quebec Pension Plan benefits typically become payable at age 65, while reduced benefits are available at age 60. Where a pension plan requires a reduction in the benefits payable to a plan member, Ontario and Nova

Scotia permit the pension plan to do so (section 55, Ontario Pension Benefits Act and section 60, Nova Scotia Pension Benefits Act) according to rules laid out in the regulations (sections 46, 47 and 48, Ontario and sections 42, 54 and 55, Nova Scotia). Both these statutes prohibit reductions in pension plan benefits resulting from subsequent increases in Canada/Quebec Pension Plan benefits, perhaps because subsequent increases are due to indexation.

The Newfoundland Pension Benefits Act permits a reduction, where the pension plan so provides, in the benefit payable under the pension plan resulting from payment of benefits under the Canada/Quebec Pension Plans (subsection 17 (6)) but there are no restrictions except those found in the pension plan itself.

British Columbia, New Brunswick and Prince Edward Island do not have any rules regarding offsets for Canada/Quebec Pension Plan benefits, although New Brunswick has indicated it will (section 48, New Brunswick Pension Benefits Act not yet proclaimed) follow the Ontario and Nova Scotia lead.

14. Old Age Security Offset

This presumably means that offsets for Old Age Security benefits will no longer be permitted, perhaps based on the fact that this is not a program which requires, as it did in the past, specific contributions, it is a non-contributory program and benefits are paid from general revenues of the federal government.

Ontario and Nova Scotia prohibit the reduction of pension plan benefits based on a person's entitlement to Old Age Security in respect of benefits accrued under the pension plan after 1986 (section 55, Ontario Pension Benefits Act) or after 1987 (section 60, Nova Scotia Pension Benefits Act).

The Newfoundland Pension Benefits Act, on the other hand, permits a reduction in pension plan benefits as a result of Old Age Security benefits (subsection 17 (6)) so long as the pension plan permits a reduction.

British Columbia, New Brunswick and Prince Edward Island do not have rules governing offsets for Old Age Security benefits. However, New Brunswick has indicated it will (section 48, New Brunswick Pension Benefits Act not yet proclaimed) follow the Ontario and Nova Scotia lead but only for benefits accrued after the commencement of the section.

To briefly summarize, to date hereof, only Ontario and Nova Scotia have enacted some of the legislation, and what little legislation that has been enacted contains discrepancies between the two provinces' approach to pensions. British Columbia and Prince Edward Island have no legislation passed, although we understand that Prince Edward Island has a bill. New Brunswick has passed a statute which follows the Ontario and Nova Scotia formats, but it has even more discrepancies. Further, although the Act has been passed, it has not yet been proclaimed.

This Commission has been advised that Ontario, which has been a leader in the field, is now considering amendments and has not even come to any firm conclusions on some of the most fundamental issues. Furthermore, the federal Task Force on Retirement Income Policy study entitled The Retirement Income System in Canada ("Lazar Report") indicated that if the approach adopted in the Consensus was to be effective, all provinces, not just a few, must adopt appropriate legislation.

Consequently, while there may well have been a consensus at the civil service level, it is questionable whether the consensus percolated to the required political level. Indications are that it did not. Accordingly, it is doubtful that there is, in fact, a consensus, and even if there is, it is difficult to determine what it currently consists of.

APPENDIX 10.08

FEDERAL TAX REFORM FOR PENSIONS

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FEDERAL TAX REFORM FOR PENSIONS

This report summarizes tax assistance used to encourage retirement savings under Tax Reform legislation as amended to December 11, 1989.

1. Retirement Income Goal

A generally accepted public retirement income policy is one where:

> "The retirement income of most individuals allows them to preserve their standard of living on retirement."

This means that spendable dollars in retirement should be sufficient to maintain an individual's pre-retirement standard of living. The actual retirement income level should recognize that work related expenses are eliminated, other expenses are decreased, and an individual's need for savings is reduced. In practice, this goal is achieved by combining retirement income from:

a) Universal Government Programs:

Canada/Quebec Pension Plan
Old Age Security

b) Employer Sponsored Plans:

The Public Service Pension Plan
The Teachers' Pension Plan
The Uniformed Service Pension Plan
The MHA Retiring Allowance

c) Individual Initiatives:

Registered Retirement Savings Plans
Savings and Other Investments

Governments have legislated certain tax incentives to encourage Canadians and their employers to save for retirement.

The following tax incentives are offered when contributions are made to certain "REGISTERED PLANS".

a) Within certain limits annual contributions to these plans will be tax deductible and will only be taxed when they are received as income.

b) The investment income earned by these contributions will be allowed to accumulate tax free until they are received as income.

In practice, these limits take the form of:

a) Actual contribution limits in the Income Tax Act, and

b) Limiting the design features of pension plans to assure a reasonable accumulation of funds.

The current controls on tax assistance are outlined in Section A while the new controls under Tax Reform are fully explained in the following sections.

2. Tax Reform: The Underlying Philosophy

Under tax reform, most Canadians will be able, on a tax assisted basis, to accumulate sufficient assets to provide the target retirement income. The contribution limits and other aspects of tax assistance have been determined using a model plan which meets the target and has the following design features:

- A 2% final earnings benefit multiplied by years of service (i.e. with 35 years service a 70% benefit).
- A spouse's pension.
- Benefits after retirement at least partially indexed.

Using reasonable assumptions, the annual amount required to accumulate this benefit is 18 percent of earnings. In order to ensure that the tax assistance is not provided to the wealthiest individuals, it will be limited to the first

$86,000 of annual earnings in 1994 (with the maximum amount being graded into this level from 1991).

3. Tax Reform: Application

The foundation of the new system rests on the following:

a) Starting in 1991, individuals may deduct up to 18 percent of their earnings as contributions to registered retirement savings subject to the following maximums:

YEAR	MAXIMUM
1991	$11,500
1992	12,500
1993	13,500
1994	14,500
1995	15,500
1996/Later	15,500/Indexed

b) Unused contributions in one year may be carried forward for up to 7 years starting in 1991 (may first be applied in 1992).

To ensure that pensions plan members and non-pension plan members are treated equally, it will be necessary for employers to determine annually the value of an employee's pension earned during the year. The Pension Adjustment (PA), as it is referred to in the Legislation, must be determined for 1990 T4s and communicated to employees no later than

February 28, 1991. This PA will be used by Revenue Canada to determine Registered Retirement Savings Plan limits for 1991 and will be communicated to individual employees by letter in late 1991. A similar procedure will be followed in each subsequent year.

Where the pension plan fixes both employee and employer contributions and retirement benefits are not fixed in the pension plan, the PA, or value of the annual pension earned, will be determined as follows:

PA = EMPLOYEE CONTRIBUTION + EMPLOYER CONTRIBUTION

In all other pension plans, such as Pension Plans maintained by the Province for its employees, the PA will be determined as follows:

PA = 9 x (BENEFIT ACCRUAL) - $600

The factor of 9 has been determined with reference to the model plan which has a 2 percent benefit accrual for an 18 percent cost. The $600 reduction is to account for plan differences.

This PA factor will then be used in determining contribution limits to Registered Retirement Savings Plans by individual employees using the following formula:

CONTRIBUTION LIMIT = 18% OF EARNINGS - PA

SUBJECT TO THE FOLLOWING MAXIMUMS

YEAR	MAXIMUM
1991	$11,500
1992	12,500
1993	13,500
1994	14,500
1995	15,500
1996	15,500[1]

The impact of these new limits on tax deductible contributions for members of Provincial Pension Plans will vary depending on the benefit level of each plan. In practice, these rules lead to the following limits for 1989 and later years.

a) **Contribution Limits - Registered Retirement Savings Plans**

For 1989 and 1990, the contribution limit is identical to the 1988 limit as shown in Section A. Starting in 1991, the annual contribution limit will be:

18% of earnings - PA (Previous Year)

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[1] Indexed thereafter

with the 18% of earnings being subject to the following maximums:

YEAR	MAXIMUM
1991	$11,500
1992	12,500
1993	13,500
1994	14,500
1995	15,500
1996	15,500[2]

Any unused contribution room may be carried forward for up to seven years.

b) Contribution Limits - Employee Contributions to Pension Plans

(i) Current Service -

Employees may deduct the amount required to be contributed to the plan up to the lesser of:

(1) 9% of earnings, and
(2) $600 plus 70% of the PA.

(ii) Past Service after January 1, 1989 -

May only purchase service covered under plan if available contribution room has been accumulated since 1989.

(iii) Past Service Prior to January 1, 1989 -

Existing rules remain in place except that eligible service may be extended to include service with any prior employer providing:

(1) The service is recognized under the Pension Plan, and

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[2] Indexed

(2) The employee does not retain a deferred pension credit for this service.

This is the definition of service proposed in the new legislation.

(c) **Contribution Limits - Employer Contributions**

The existing rules remain in place except that the guidelines on plan design will now be a part of the Income Tax Act. A summary of these guidelines is provided in Section B of this Appendix. Also under the new rules eligible service under the Plan will have to exclude non-worked service, i.e. University Time.

4. Tax Reform Other Issues

a) **Termination of Employment non Vested Pension Benefits**

Under Tax Reform, the full value of pension benefits is charged to an individual's retirement savings allowance each year (18 percent of annual earnings). Since the Province's Pension Plans do not vest pension benefits in employees prior to 10 years, an overcharge may occur for employees who terminate service with less than 10 years of service. In order to address this issue, Tax Reform requires that a Pension Adjustment Reversal (PAR) be circulated for each such employee. PAR for an individual is simply:

The sum of the last seven PAs starting in 1990

LESS

The value of the termination benefit for this period.

5. Retroactive Improvement in Benefit or Past Service Purchases

Under Tax Reform, the ability to improve tax assisted retirement benefits for periods after 1989 rests solely on the availability for accumulated contribution room under the 18 percent rule with 7 year carry forward. Since this available contribution room is being monitored by Revenue Canada, each improvement in benefit for service after 1990 must be approved by them. Under Tax Reform, a Past Service Pension Adjustment (PSPA) must be calculated where the following transactions occur with respect to post 1990 periods:

a) benefits improved retroactively, or
b) service being purchased, or
c) service being transferred, or
d) benefits being changed in the plan.

The PSPA is simply the "Sum of the PAs for the benefit improvement for each of the years concerned (exclude pre-1990 service)". The value of the PSPA determined in this manner must generally be forwarded to Revenue Canada for approval of the change.

6. Transfers Between Plans

Effective January 1, 1989 only the following transfers, except where otherwise indicated, will be acceptable for Registered Plans.

7. General Requirements

a) All transfers to be direct.

b) Transfer value must be less than value of benefits lost.

c) Transfer amounts neither income nor deduction for taxes.

d) Transfer of actuarial surplus prohibited.

8. Specific Type of Transfers

a) Money Purchase to Money Purchase or RRSP
   - No limit on transactions
   - No PSPA requirements

b) Money Purchase to Defined Benefit
   - PSPA calculated on Defined Benefit
   - Transfer amount reduces PAR
   - Possible limit

c) Defined Benefit to Defined Benefit

- PSPA calculated on defined benefit
- Transfer amount does not reduce PAR

d) Defined Benefit to Money Purchase or RRSP

- Amount transferred limited by formula
- Transfer amount reduces PAR

e) Transfer to RPP or RRSP on Marriage Breakdown

- Tax free if made to spouse or former spouse

f) Transfer Return Contribution to RPP or RRSP

- Tax free if limited to contributions and benefits reduced

g) Transfer Lump Sum Death Benefits to RPP or RRSP

- Tax free if made for spouse's benefit

Other items which are changing with tax reform are as follows:

- The maximum 35 year pension accrual period is being eliminated.
- Starting in 1989 tax deductible Retiring Allowances will be limited to $2,000 per annum for service after 1988.

- Starting in 1989 up to $6,000 can be transferred from pension income to spousal RRSP until 1994.
- Transfer of pension income to RRSP will be discontinued in 1990 and later.

SECTION A

CURRENT CONTROLS ON TAX ASSISTANCE

SECTION A

CURRENT CONTROLS ON TAX ASSISTANCE

The current controls on tax assistance are explained in the next three sections.

1. CONTRIBUTION LIMITS - REGISTERED RETIREMENT SAVINGS PLANS

Members of Pension Plans - 20% of earned income to a maximum of $3,500 less contributions to a Pension Plan.

Non-Members of Pension Plan or Members Not Accruing Benefits - 20% of earned income to a maximum of $7,500.

2. CONTRIBUTION LIMITS - EMPLOYEE CONTRIBUTIONS TO PENSION PLANS (SECTION 8(1)(m) INCOME TAX ACT):

In accordance with the Income Tax Act, three types of employee contributions may be made with respect to the following periods of

A) Current Service

B) Past Service While Not a Contributor

C) Past Service While a Contributor

The amount limits for each of these is as follows:

A) CURRENT SERVICE

PERIOD	ANNUAL LIMIT
1986 & Later	Any amount required by Plan
1976 - 1985	Amount contributed up to $3,500
Prior to 1976	Amount contributed up to $2,500

B) PAST SERVICE WHILE NOT A CONTRIBUTOR

For each year of eligible past service while not a contributor to the Plan, an extra $3,500 may be contributed at a rate of $3,500 per year. This contribution is in addition to any Current Service Contribution. For Teachers this also applies for service while a contributor (To be repealed after 1994).

C) PAST SERVICE WHILE A CONTRIBUTOR

For each year of eligible past service while a contributor to the Plan, an amount up to $3,500 less current year contributions for Current Service and Past Service while not a contributor.

Eligible past service for purposes of the above means:

(i) Service with the current employer plus,

(ii) Service with a prior employer who has a reciprocal agreement or portability agreement with the current employer.

Where both the employee and employer contributions are fixed in a pension plan, the defined contribution of each is subject to an annual maximum of $3,500. In addition, contributions for past service (Items B & C above) cannot be made.

EXAMPLE 1:

Mr. A. is a member of a defined benefit pension plan and makes current service contributions of $2,500, $3,000 and $3,500 in years 1986, 1987 and 1988 respectively. Mr. A. has the following eligible past service:

i) Two (2) years of Past Service While Not a Contributor, or

ii) Two (2) years of Past Service While a Contributor.

Mr. A's tax deductible contributions for 1986 to 1987 are as follows:

i) TAX DEDUCTIBLE CONTRIBUTIONS:

Years of Contribution	1986	1987	1988
Current Service	$2,500	$3,000	$3,500
Past Service	3,500	3,500	
Total	$6,000	$6,500	$3,500

ii) TAX DEDUCTIBLE CONTRIBUTIONS:

Years of Contribution	1986	1987	1988
Current Service	$2,500	$3,000	$3,500
Past Service	1,000	500	
Total	$3,500	$3,500	$3,500

3. CONTRIBUTION LIMITS - EMPLOYER CONTRIBUTIONS TO PENSION PLANS (SECTION 20(1)(s) AND 20(1)(q) INCOME TAX ACT):

Employer contributions to pension plans are limited to the amount required to pay the promised benefits providing the pension plan benefits conform to Revenue Canada guidelines. These guidelines are currently contained in Information Circular 72-13R7 which provides for the following:

- A maximum pension of $60,000 after 35 years of service or 70 percent of earnings, whichever is less.

- A minimum age for payment of maximum pension of age 60.

- A maximum age at which benefits must commence to be paid, age 71.

- Maximum survivor and disability pensions.

- Other requirements such as eligible service.

By limiting the amount of pensions payable, the fund accumulation for these benefits is controlled. This limits the tax assistance provided by allowing investment income to accumulate tax free.

SECTION B

PLAN AMENDMENTS AFFECTING BENEFITS EFFECTIVE JANUARY 1, 1991, FOR BENEFITS ACCRUING AFTER THAT DATE

SECTION B

PLAN AMENDMENTS AFFECTING BENEFITS EFFECTIVE JANUARY 1, 1991, FOR BENEFITS ACCRUING AFTER THAT DATE

All pension plans to be modified as follows:

(a) employee contributions not to exceed lesser of:

- (i) 9% of earnings, or
- (ii) $600 plus 70% of PA;

Not to exceed required levels to meet benefits;

(b) retirement benefit is defined so that PA may be determined;

(c) benefit accrual must be during period of pensionable service with the exception of disability. Past service benefits must be approved by minister;

(d) Maximum pension:

Pension in first year following retirement cannot exceed lesser of:

- (i) 2% of best average earnings x pensionable service, or
- (ii) $1,722.22 (indexed after 1984) x pensionable service.

Best average earnings is greater of:

(i) 1/3 of highest consecutive 36 month period,

(ii) 1/5 of member's earnings for 5 consecutive 12 month periods (no overlapping);

(e) Early Retirement:

No benefit reduction required if benefit paid at earliest of:

(i) age 60,
(ii) 30 years pensionable service,
(iii) age and service total 80,
(iv) date of permanent disability;

For police, firemen, correction officers, air traffic controllers, airline pilots (i) becomes 55, (ii) works 25 and (iii) becomes 75. Also excluded is Canada Forces. Where pension commences earlier than above, benefit must be reduced by 1/4 of 1% for each month early;

(f) Postponed Retirement:

Where pension starts after 65, benefits may be actuarially increased (approximately 1/2 of 1% per month);

(g) Bridging Benefits:

Amount that may be paid equals current OAS and CPP benefit entitlement:

	Monthly (1988)
CPP	$543
OAS	$310
	$853

Above may be paid at age 60 with 10 years of pensionable service. If pay early or shorter service following reductions apply:

(i) 1/4 of 1% per month below age 60, and

(ii) 10% less for each year of pensionable service less than 10;

(h) Inflation Adjustment:

Increase not in excess of increase in Consumer Price Index;

(i) Guarantee Period:

Pension benefits may be guaranteed up to 15 years from date of commencement;

(j) Post Retirement Survivor Benefits:

May pay up to 75% of pension to one survivor or 100% to combination of survivors;

(k) Pre-Retirement Survivor Benefits and Disability Pension:

May pay up to lesser of:

(i) 75% of projected pension, or

(ii) Y.M.P.E. in year of death ($27,700 in 1989);

(l) Lump Sum Payments After Death:

(i) payment cannot be made if other payments made,

(ii) payment not to exceed present value of deferred pension

(iii) payment must be made as soon as practible after member's death;

(m) Optional Forms of Pension:

Following forms permitted:

(i) 4% guaranteed increase,

(ii) Consumer Price Index increase,

(iii) adjustments based on excess interest.

APPENDIX 10.09

CONTACTS

APPENDIX 10.09

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APPENDIX 10.10

LIST OF INDIVIDUALS APPEARING AT COMMISSION HEARINGS

APPENDIX 10.10

LIST OF INDIVIDUALS APPEARING AT COMMISSION HEARINGS

(in order of appearance)

Mr. Tom Lush - MHA Speaker of the House of Assembly
Mr. John Bennett - Department of Finance
Mr. Pierre Desmarais - Alexander Consulting Group

Mr. Edward Roche - Her Majesty's Penitentiary
Mr. Donald Saunders - Her Majesty's Penitentiary

Mr. Robert Smart - Department of Education
Mr. Aubrey Halfyard - Department of Education

Mr. Wayne Noseworthy - Nfld Teachers' Association
Mr. Wayne Russell - Nfld Teachers' Association
Mr. Keith Coombs - Nfld Teachers' Association
Mr. John Staple - Nfld Teachers' Association

Mr. Robin Burnell - Nfld Hospital and Nursing Home Association
Mr. John Peddle - Nfld Hospital and Nursing Home Association

Mr. Lloyd Powell - Treasury Board Secretariat
Ms. Alison Earle - Treasury Board Secretariat
Ms. Anne Chafe - Treasury Board Secretariat

Mr. Bernard Madden - International Association of Firefighters

Mr. Keith Baker - Nfld and Labrador Housing Corporation
Ms. Mary Marshall - Nfld and Labrador Housing Corporation

Mr. Joseph Gullage - Royal Nfld Constabulary Police Association
Mr. Des Peddle - Royal Nfld Constabulary Police Association
Dr. Douglas House - Royal Nfld Constabulary Police Association

Mr. Peter Ivany - Nfld Association of Public Employees
Mr. Leo Puddester- Nfld Association of Public Employees
Mr. Jim Ryan - Nfld Association of Public Employees
Mr. Pat Meyers - Nfld Association of Public Employees

Mr. Bob Clarke - International Brotherhood of Electrical Workers

Mr. Larry Power - Canadian Union of Public Employees
Ms. Darcey Beggs - Canadian Union of Public Employees

Ms. Jeanette Andrews - Nfld and Labrador Nurses' Union
Ms. Alice Mannion - Nfld and Labrador Nurses' Union

Mr. Eric Rowe - Public Service Pensioners' Association
Mr. Bert Hillier - Public Service Pensioners' Association
Mr. Robert Rex - Public Service Pensioners' Association

Mr. Cyril Bambrick - Government Managers' Association
Mr. Carl Smith - Government Managers' Association

Mr. Bruce McDonald - Wm. M. Mercer Limited
Ms. Mary Galway - Wm. M. Mercer Limited

Apologizes are made to anyone who may have been overlooked.

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Members of House of Assembly Retiring Allowance

- Department of Finance

Uniform Service Pension Plan

- Department of Finance
- Senior Corrections Officers
- Commissioned Officers, Royal Newfoundland Constabulary
- Royal Newfoundland Constabulary Association

Teachers' Pension Plan

- Department of Education
- Newfoundland Teachers' Association

Public Service Pension Plan

- Department of Finance
- Newfoundland Hospital and Nursing Home Association
- Mr. Pierre Desmarais, Alexander Consulting Group
- Treasury Board
- Newfoundland & Labrador Housing Corporation
- Newfoundland Association of Public Employees
- International Brotherhood of Electrical Workers
- Canadian Union of Public Employees
- Newfoundland & Labrador Nurses' Union
- Public Service Pensioners' Association
- Newfoundland & Labrador Government Managers' Association
- Newfoundland & Labrador Hydro
- Newfoundland Liquor Corporation
- Newfoundland & Labrador Computer Services
- Mr. O. J. Darris, Public Relations Officer, Armed Forces Pensioners Annuitants Association of Canada

PHASE II

Covering Unfunded Liability, Investment Program and Other Pension Matters in order of presentation or receipt:

All Pension Plans and Retiring Allowances

- Pension Investment Committee

Public Service Pension Plan

- Newfoundland Association of Public Employees
- International Brotherhood of Electrical Workers
- Newfoundland & Labrador Nurses' Union
- Newfoundland & Labrador Government Managers' Association
- Newfoundland & Labrador Housing Corporation

Teachers' Pension Plan

- Newfoundland Teachers' Association

Uniformed Services Pension Plan

- Royal Newfoundland Constabulary Association
- City of St. John's

REPORT OF THE CHAIRMAN
OF
THE COMMISSION OF INQUIRY ON PENSIONS

JANUARY 1990

VOLUME II

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PENSIONS AND FAMILY LAW

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September 1989

PENSIONS AND FAMILY LAW

A Commentary by D. S. Rudd, F.S.A.,F.C.I.A.

1. FAMILY LAW ACT, 1986 of Ontario

In the Ontario Act two definitions are important:

"property" means any interest, present or future, vested or contingent, in real or personal property, and includes ...

(c) in the case of a spouse's rights under a pension plan that had vested (as amended later in 1986) the spouse's interest in the plan including contributions made by other persons;"

"net family property" means the value of all the property, except property described in sub-section (2), that a spouse owns on the valuation date after deducting ...

(b) the value of property, other than the matrimonial home, that the spouse owned on the date of the marriage, after deducting the spouse's debts and other liabilities, calculated as of the date of marriage;"

Clause (c) above was changed from wording dealing with pension benefits vested under the Pension Benefits Act to "the spouse's interest in the plan" at the same time emergency amendments were made dealing with life insurance in the fall of 1986. That summer, after dealing with my first Family Law case, I spent some time with the lawyer responsible for the Pension Benefits Act drafting (with whom I had worked for many years on the Pension Commission of Ontario) dealing with the draft revisions to the Pension Benefits Act. I raised this problem in the Family Law Act as there are other values beside the pure pension payments involved. Presumably as a result, the wording was changed to broaden the concept.

2. PENSION BENEFITS ACT, 1987 of Ontario

Most separations in Ontario are subject to the Pension Benefits Act, 1987 as far as any pension rights are concerned in that the pension plan of the employee is subject to this Act at least with respect to his service with the employer in Ontario. An exception is pension plans for employees subject to federal jurisdiction such as civil servants, the railways, radio and television, etc. which are subject to the federal Pension Benefits Standards Act.

The Ontario Act was originally passed effective from January 1, 1965 and went through major amendments effective January 1, 1987. The federal Act was also revised in 1986 effective from that date. The revisions provided for vesting after 2 years rather than the old "age 45 and 10 years of service" which still applies for statutory vesting for pension benefits earned or created prior to January 1, 1987. However, most plans provide for earlier vesting than age 45 and 10 years of service.

Plans also provide "ancillary" benefits such as death benefits prior to retirement, subsidized early retirement benefits, survivor income benefits and the values of these benefits normally vest by statute in the value to be attributed to the spouse member if they have vested under the terms of the plan. (Section 41 (2) though even the proposed new wording is not as clear as in the predecessor Act.)

At the present time in Section 52 the Act contains some unsatisfactory material concerning pension splitting which will be changed this fall. Regulation 52 is significant and reads as follows:

> "For purposes of sub-section 52 (2) of the Act, the pension benefits accrued during the period a member had a spouse shall be determined as if the member terminated employment at the valuation date in accordance with the terms of the plan at that date, and without consideration of future benefits, salary or changes to the plan, but with consideration for the possibility of future vesting."

This has led to the general use of the "Termination (of employment) Method" for determining the amount of benefit in the pension plan on the basis of assuming termination of employment. This is in contrast to the "Retirement Method" used in the landmark Rutherford case in British Columbia. This involved pension splitting based on the proportion (service in the plan while married) over (total service in the plan) of the estimated final retirement pension from the estimated retirement age. Interestingly, the commentary in the Draft Revisions to the Pension Benefits Act of Ontario mentions that the Retirement Method may be appropriate in some circumstances, notwithstanding this Regulation.

Under Ontario law, a value must be obtained for purposes of the equalization concept, even if pension splitting is eventually going to be used to solve the equalization problem.

The Canada Pension Plan provides for pension splitting on separation upon application by either spouse by averaging the pensionable earnings of the two parties during the marriage years and is usually excluded from the equalization.

3. COMPOUND INTEREST, MORTALITY AND DISCOUNTING

or How Old Was the Member at Separation?

The Canadian Institute of Actuaries has published guidelines for the actuarial profession suggesting the mortality table and the interest rate. For non-indexed benefits, effectively the interest rate is that of long Canada bonds in the month prior to separation deemed to be applicable for 15 years, and 6 per cent thereafter. For fully indexed benefits, the interest assumption is 3 per cent interest with modification in the first 5 years to recognize the current difference between interest rates and inflation rates.

Sample discount factors for $100 per month of accrued pension payable from age 65 in a plan with no pre- or post-retirement benefits on death are as follows, assuming current levels of interest rates:

Age at Separation	(1) Not Indexed	(2) Fully Indexed	Ratio of 2/1
35	$1,030	$4,890	4.7
50	$2,530	$7,830	3.1
65	$9,320	$13,970	1.5

The above values are for males and for females would be somewhat higher due to the greater longevity.

As can be seen, the higher the interest rate, the lower the value. If we ever return to a non-inflationary environment, the rates in column 1 would move towards those of column 2.

Non-indexed plans which require employee contributions: quite often except at the highest ages, the employee contributions accumulated with interest will be a minimum value greater than the value of the deferred pension, subject to certain minimums under the Pension Benefits Act. Those in civil service type organizations who have the benefit of indexed pensions suddenly realize the value of their fringe benefits when separation occurs, as values can go over $200,000.

4. DETERMINATION OF BENEFITS TO BE VALUED

(a) Types of Plans

There are two basic types of plans: Money Purchase and Defined Benefit and the latter has several variations. Some plans are dual plans with a formula for benefits based on whichever gives the better result of a Money Purchase or a Defined Benefit approach, and others are combination plans with the employee contributions going into a Money Purchase concept while the employer provides a Defined Benefit type of plan.

Money Purchase Pension Plans

(i) Under these plans usually both employee and employer contribute a percentage of pay and in effect an individual investment account is established for each employee. His accrued value at any time is in effect the amount in his fund and at retirement the personal fund is used to purchase a life annuity. This is similar in concept to the individual Registered Retirement Savings Plan and the Group Registered Retirement Savings Plan.

Defined Benefit Plans

(ii) *The flat benefit plan* is most common with blue collar and blouse workers. The benefit is described as X dollars per month for each year of credited service. As part of union negotiations, this is usually increased periodically, and retroactively for all prior years of credited service.

(iii) The next most common type of plan is the *Career Average Plan*, usually contributory. Under this plan the pension benefit is a percentage of the earnings covered by the plan each year. For example, the employee may contribute 5 per cent of earnings, perhaps less CPP contributions, and the employer provides a pension benefit of 2 per cent of earnings for that year payable from age 65 - sometimes expressed as 40 per cent of employee contributions. These plans tend to be periodically "upgraded" whereby the accrued pension benefit, rather than being the sum of all the small deferred pensions earned in prior years, is raised to a percentage of current earnings or average earnings over a few recent years for all years of prior service. Such plans also may have a minimum provision on a final average earnings basis.

(iv) The next type is the *Final Average Earnings Plan* whereby pension is based on a percentage such as 1.5% or 2% of current average earnings or best average earnings for 3 to 5 years multiplied by the years of credited service. These are often integrated with the Canada Pension Plan through a deduction of a small percentage of earnings up to the recent average YMPE of the Canada Pension Plan for all years of credited service or credited service since January 1, 1966. This is the richer type of plan provided for most civil servants, teachers, etc.

(b) Valuation Method

For reasons discussed above, the Termination Method based on assuming an accrued benefit as if terminated employment at the date of separation is now the common method in Ontario. Based on Regulation 52, in a final average earnings plan, the effect of future increases in earnings is not taken into account. Similarly in a union plan on a flat benefit basis, the accrued benefit is based on the terms of the plan in effect at the date of separation.

The Retirement Method would estimate pension at retirement based on some assumption as to future earnings, and then take the proportion of the estimated final total pension that would be deemed to have accrued during marriage as indicated above. This method, of course, gives much larger values for final average earnings plans than does the Termination Method, though if the plan is fully indexed and all service in the plan occurred after marriage, there is little difference between the two methods.

5. MARRIAGE AFTER PLAN ENTRY

There are three theoretical approaches possible here, two of which can give significantly higher values than the third. Terminology is not standardized.

(i) Increase in Value Method (Family Law Act Method)
Value of total accrued benefit at separation is determined; the value of benefit that had accrued at date of marriage under the plan terms then in effect is valued at date of marriage. The increase in the values is the value of his interests that accrued during marriage.

(ii) Increase in Benefit, Valued at Separation
As in the previous method, the amount of benefit that had accrued at each date is determined, and the increase in the benefit is valued at the date of separation.

(iii) Pro-Rated Method
The total accrued benefit at separation is multiplied by ratio of membership service while married to total membership service to separation. This usually gives the same value as if assume entered the pension plan for the first time at the date of marriage.

The first two methods give significantly higher values, particularly when the plan has been retroactively improved during the marriage period either by an amendment to the plan or by an automatic upgrading of all previous benefits through benefits being based on final (current) average earnings as will be demonstrated in the example that follows:

5. EXAMPLE

Assume a flat benefit plan which at the time of separation provided $20 per month per year of credited service, no employee contributions, and a member who entered at age 25, married at age 35 and separated at age 50. No death benefit provided for pre- or post- normal retirement at age 65, and no early retirement subsidies. Using the factors in Section 3 above:

(i) Increase in Value (FLA)
25 years in plan, total accrued benefit of $500 per month, now age 50 with value of 5.00 x $2,530 = $12,650.
DEDUCT value at marriage when rate then $8.00 per month per year of credited service, with 10 years of credit, giving $80 per month and a value of .80 x $1,030 = $824. Therefore, increase in value of interest in the pension plan while married $12,650 - $824 = $11,826.

(ii) Increase in Benefit, Valued at Separation
Increase in benefit since marriage is $500 - $80 per month, or $420 per month. Value at age 50 at separation 4.20 x $2,530 = $10,626.

(iii) Pro-Rated Method
Total benefit at separation $500 per month, multiplied by 15 years in plan while married over total of 25 years in plan, or $300 per month. Value at age 50 is 3.00 x $2,530 = $7,590.

Exercise: Recalculate assuming all deferred pensions and pensions indexed by amendment made after marriage, before separation. (FLA Method gives 5.00 x $7,830 = $39,150 less .80 x $1,030 = $824 or $38,326. Pro-Rated Method gives $23,490.)

Notes: The valuation factor at age 35 would probably have been different from that used due to different interest rates in the economy 15 years earlier. If the plan provided for the value of the deferred pension to be payable on death prior to retirement (required under the Pension Benefits Act for post-January 1, 1987 accruals), values would be over 12 per cent higher (the increase in value is analogous to the cash value of a life insurance policy). In civil service type final average earnings plans, which are indexed, the current benefits may be equivalent to $50 to $80 per month per year of service (2 per cent of earnings) and, with the high indexed factors, give substantial values.

6. SOME OTHER COMPLICATIONS

(i) Death Benefits
These are sometimes left out of calculations but, as indicated above, the value of these is analogous to the cash value of life insurance and is included in the employee's interest.

(ii) Spousal Survivor Income Benefits
These are usually excluded on the grounds that the marriage is breaking up. On the other hand, they do form part of the value of his interests in the plan and will be reinstated on remarriage or sufficient cohabitation in most cases. May present problems in pension splitting. In the Marsham case, the judge threw them out of the actuarial value but then tried to attach any future spousal survivor income benefits in his support order as is usually done under the retirement method.

(iii) Ad Hoc Indexing
The OMERS plan for municipal employees and the corresponding multi-employer plan for hospital employees both have a history of upgrading pensions regularly. There is an announced and promised system to endeavour to continue to do so. Most actuaries give some recognition to this but it can be argued that if it is not provided for in the plan itself, it should be ignored. For those that don't, valuation factors are somewhere in between the not indexed and fully indexed factors such as would apply in a plan with contractual partial indexing.

(iv) Incomplete Vesting

Both the definition of property and the regulation under the Act contemplate making allowance for the probability of accrued pension rights becoming vested. With currently accruing benefits vesting after 2 years of membership in the plan, it is only in pre-1987 benefits that this might be a question.

(v) Subsidized Early Retirement

These take several forms such as less than "actuarial" reduction if retire early, or 0 reduction if meet a certain qualification such as age 60 and at least 30 years or service, or age plus service equals 90 or 85. Under the Retirement Method this has a very significant effect and can lead to assumed retirement ages of 55. Under the Termination Method, they may still come into play such as a teacher subject to the Rule of 90 whose service to date of separation plus his ever increasing age will still give him the right, even if he had terminated,(i.e., vested) to early retirement without reduction at age perhaps 61.

(vi) Income Tax

There has been a wide variation in allowance for Income Tax in court cases. It should be noted, however, that effective from January 1, 1988 the income tax system has been liberalized with currently up to approximately $9,400 of post-retirement income tax-free. It can be argued that no tax should be deducted unless the non-member spouse can tax-shelter an equalization payment, such as through the matrimonial home. Most often an assumed average tax rate after retirement is used, based on the current Income Tax Act. This not an "actuarial" matter as there is no way of predicting the future with respect to taxes. Because of our deficit and further social programmes, some day we may be taxed even more heavily than Sweden through income taxes, or may have moved even more to a Value Added Tax on consumption concepts with smaller income tax rates.

(vii) Changing Legislation, both Regulatory and Tax

(viii) Pension Splitting sometimes a Necessity

Pension liabilities might be substantial such as an ex-military man already receiving a significant indexed pension plus further accruals in a civil service plan yet very few personal assets. Present legislation unsatisfactory in Ontario and awaiting the revision this fall.

(ix) Confused Judges, Lawyers and Actuaries

7. INFORMATION REQUIRED

1. Date of birth of member and spouse
2. Date of marriage and separation

3. From plan administrator or employer or employee:

   (a) date of entry into plan
   (b) accumulated member's contributions with interest at separation
   (c) accrued pension benefit to date of separation
   (d) copy of employee booklet describing plan as in effect at separation
   (e) if marriage after plan entry, the previous three items as of date of marriage if possible
   (f) has there been a history of indexing pensions in any fashion?

4. Employee plan anniversary statements:

   These often give accrued pensions and accumulated employee required contributions and other information. If they can be obtained bracketing or near the separation date, items (b) and (c) above need not be requested from the employer if a close approximation will be acceptable.

This information is normally obtained through the member spouse and his lawyer. The factors given above can give a very rough idea of what is involved, even though information from an employee's annual membership statement as of the plan anniversary prior to the separation date is the best information that can be obtained as to entitlement. Many plan administrators will now give your actuary necessary supplementary information without a formal release from the employee, but it may be necessary for this to be obtained for your actuary to complete the information required. He may be able to estimate a value from data available. The law in theory provides that the spouse is entitled to information with respect to a member of a pension plan but some plans will not recognize this.

D. S. Rudd, F.S.A.,F.C.I.A.

APPENDIX B

DRAFTING PENSION DIVISION LEGISLATION: AN OVERVIEW OF SELECTED ISSUES

Joint Meeting of the Federal - Provincial Family Law
Committee and the Family Law Section, Canadian Bar Association,
on Pensions: April 7-8, 1989, Toronto.

DRAFTING PENSION DIVISION LEGISLATION: AN OVERVIEW OF SELECTED ISSUES

E. Diane Pask[*]

Over the past fifteen years, pension reform has been undertaken with the aim of developing uniform pension benefits standards legislation across Canada. While consensus between the federal government and the various provinces has not been achieved, there are a number of common elements in the reform legislation.

This paper is concerned with the different methods utilized in that reform legislation by various Canadian jurisdictions to develop schemes of administrative division and separation of the pension, pension benefit or credits between the spouses. The jurisdictions where pension reform has most affected division of pensions are Manitoba, New Brunswick, Nova Scotia and Ontario. Although Alberta has also recently adopted reform legislation, its legislative approach to pension division between spouses is much more minimal than that of the jurisdictions just listed. Saskatchewan and Quebec have legislation in process. Ontario's is under further consideration. The federal government's main contribution to this area of reform occurs in the Pensions Benefits Standards Act, 1985. The Canada Pension Plan does not represent pension benefits standards legislation of the employer-sponsored type dealt with in the reform legislation. It does demonstrate a method of division applicable to defined contribution plans and some interesting approaches to survivorship and common-law issues.

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[*]. Associate Professor of Law, University of Calgary, Faculty of Law, currently on leave to the Immigration and Refugee Board of Canada. This paper is based on research funded in part by the Alberta Law Foundation and the Women's Bureau of Labour Canada; it is presented with the permission of Carswell Legal Publishing Co., publishers of: Pask, D. and Hass, C., Division of Pensions on Marriage Breakdown (tentative title; 1988-89). © 1989. Thanks are extended to Keith McComb, Consulting Actuary, who serves as consultant to the project.

The purpose of this paper is not to repeat past work such as the 1986 Report of the Institute of Law Research and Reform, Alberta, which proposed draft legislation for Alberta.[1] Rather, a paper was requested which would provide an overview of the major issues which current reform legislation has or has not addressed but which might be considered in drafting uniform legislation.[2]

Legislative approaches differ widely. The fundamental difference concerns the extent of governmental involvement considered necessary to protect spouses, particularly non-member spouses, involved in the process. Tables are provided at the end of this paper giving citations indicative of the progress of the legislation and comparing the legislative approaches to selected issues.

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[1] Institute of Law Research & Reform, Matrimonial Property; Division of Pension Benefits Upon Marriage Breakdown, Report No. 48, June 1986.

[2] Legislative diversion of the pension does not seem contrary to any principle of public policy because it would be in fulfillment of the policy of preserving that pension for the contributer and his family: Moravcik v. Moravcik (1984), 37 R.F.L. (3d) 102 (Alta. C.A.) at 107, referring to judicial diversion of the pension.

As a point from which to begin, three main objectives are proposed as a guide in drafting uniform legislation:

- providing for fairness and equity between the parties. Courts in various jurisdictions have developed a variety of approaches in order to provide fairness and equity. Accordingly, it might be neither possible nor wise to attempt to find the one "perfect" solution.
- achieving a separation of interests between the parties without compromising fairness.
- avoiding or minimizing future financial relationships between the parties without compromising fairness.

SUBSTANTIVE ISSUES

(A) SHOULD THE LEGISLATIVE SCHEME BE MANDATORY?

- Should opting-out of the legislative scheme be permitted? If so, by spouses only, pursuant to contract or agreement? By court order only? Or either? If permitted, should opting-out be subject to conditions?
- Should the proportions of division be variable within the context of the legislative scheme? By spouses only, court order only or either?

Under the provisions in Manitoba's P.B.A., equal division of any pension benefit credit or pension payment (which is subject to that Act) is mandatory where there is a court order or agreement dividing the family assets of spouses or parties to a common-law relationship, notwithstanding that the order or agreement may provide for a different division. Lump-sum buy-out arrangements are not effective to avoid the legislation although the recent case of Sader v. Sader has held that the mandatory provision is not triggered unless there is a court order or an agreement between the parties dividing assets.[3] The relevant portion of the Manitoba P.B.A. reads as follows:

> "Division of pension benefits on marriage breakup. s.31(2) Subject to subsection (3), where
>
> (a) pursuant to an order of the Court of Queen's Bench made under The Marital Property Act, family assets of a person are required to be divided; or
> (b) pursuant to an agreement between spouses, family assets of the spouses are divided between the spouses; ...
>
> the pension benefit credit of the spouses ... in a pension plan, or any payments due to them under a pension plan, shall be divided between them, and the division shall be made in the manner prescribed in the regulations notwithstanding that the order or the agreement, as the case may be, may require the division to be made in a different manner."

Section 31(3) limits ss. (2) (above) to spouses or parties to a common-law relationship who began living separate and apart from each other after Dec. 31, 1983. Section 24 of the Pension Benefits Regulation 188/87R, as amended by Man. Reg. 223/88 prescribes the manner in which the division is to be made and, in s. 24(3), states that it shall be "on an equal basis between spouses".

The problem in Sader was that division would result in a loss of pension income to each spouse. This was not a case of a simple transfer from the member spouse to the non-member spouse. Mrs. Sader, who was already retired, would lose $280 per moth and Mr. Sader, upon retirement, would also lose approximately $40 per month. The trial judge viewed the mandatory nature of the administrative division as a "major defect". He expressed a lack of understanding as to why the provision of independent legal advise could not operate as a condition permitting opting-out, particular where the mandatory scheme is to the mutual disadvantage of the parties. (It is not clear why both parties were mutually disadvantaged since one might have thought that Mr. Sader would, overall, be better off to the extent of $240.00 per month).

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[3] Sader v. Sader, unreported decision, Dec. 16, 1988, Hassan, J., (Man. Q.B.).

The mandatory nature of Manitoba's scheme has been quite controversial. It has been defended by various groups on at least 3 grounds: (1) opting-out in effect leaves the non-member spouse with no pension benefit since such benefits, once given away, are never regained. Since the original purpose of the funding was to provide retirement security, this purpose must be maintained by any legislative scheme;[4] (2) opting-out is contrary to the overall scheme of pension legislation which, by preventing 3rd party assignments, otherwise denies the member the right to obtain a lump sum in exchange for the pension. Moves away from the basic principle should, at least, be very carefully regulated; (3) opting-out does not necessarily result in equity between spouses. The provision of independent advice has not always resulted in an increased understanding of rights or the need for a proper valuation of pension benefits before signing separation agreements and, therefore, does not itself serve as protection.[5]

In summary, the policy behind the Manitoba pension division section is controversial because it equates the position of the 55 year old homemaker who

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4. Pension administrators from a number of jurisdictions give this as a reason for not permitting benefit withdrawals as a result of division; the same reasoning applies to opting-out.

5. E.g. Tutiah v. Tutiah (1986) 48 R.F.L. (2d) 337 (Man C.A.)- affg, (1985) 42 R.F.L. (2d) 357 (Q.B.) discussed at Pask, E. Diane, "Pension Plans and Employee Contributions: Tutiah v. Tutiah, (1986) 24 Alta. Law Review 530.

needs the pension, to that of the 35 year old executive who has a pension and does not want her or his pension or spouse's pension to be affected. It provides no flexibility. On the other hand, it provides protection and certainty to the non-member spouse and is administratively convenient.

A related issue is whether either the court or the parties should be permitted to vary the proportions of the division, the unequal interest still following within the scheme of the Act. The Ontario and Nova Scotia P.B.A.'s limit the non-member spouse to 50% of the benefit being divided. In Manitoba the division must be equal. In New Brunswick ss. 44(6) and (13) provide that the member's benefit cannot be reduced by more than 50% pursuant to a contract or agreement. The court, however, is not so restricted and, one assumes, could reduce to zero the share of either the member or non-member spouse.

Alternatively, some might argue for permitting the parties themselves to agree to any split of the benefit that they saw fit but providing no judicial discretion.

(b) TREATMENT PRIOR TO VESTING?

* Prior to vesting, should valuation and division be carried out as if vesting had occurred? Should there be any applicable methodology? If so, what?

Pension reform, as indicated in Table 2, has reduced the period of plan membership required before vesting occurs. While most pre-reform legislation applies the "45-and-10" vesting rule to benefits earned under those statutes, benefits earned since the reforms came into force will vest much earlier, usually after two years of plan membership or five years of continuous service. Thus an employee with pre-1987 service may have 2 or 3 separate vesting dates: in Ontario, for example, pension benefits earned before January 1, 1987, will vest according to the "45-and-10" rule while benefits earned after that date will vest after 2 years of membership. Benefits earned prior to 1965, when the former P.B.A. came into force, vest according to the plan document e.g. which could require 30 years of service before vesting occurs.

Pension reform legislation in Ontario and Nova Scotia specifically provides for the inclusion, in valuation of a pension benefit, of an amount related to an unvested employer contribution or to the corresponding benefit. The Ontario regulation reads as follows:[6]

> Reg. 52 For the purposes of subsection 52(2) of the Act, the pension benefits accrued during the period a member had a spouse shall be determined as if the member terminated employment at the valuation date in accordance with the terms of the plan at the date and without consideration of future benefits, salary or changes to the plan but with consideration for the possibility of future vesting (Emphasis added).

It is not clear how the crucial phrase "with consideration for the possibility for future vesting" will be interpreted.[7] It would be possible for the plan administrators to develop a method of calculation of pension value as a fraction of a capitalized value, proportionate to the period remaining until vesting. Alternatively, the regulation could be interpreted to require the entire value of the benefit to be capitalized and shared as if the benefit were, in fact, vested (with or without an actuarial discount for

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6. Ont. Rev. 708/87, gazetted January 2, 1988 and effective January 1, 1988, as amended; see also, N.S. Rev. 46 of which is almost identical to Ontario Reg. 52.

7. There may be a question as to whether the wording of the Ontario Regulation exceeds the scope permitted by the Act and is, therefore, invalid. See, for a discussion, Pask, E. Diane, "Pension Division Across Canada: New Developments", published in the 1988 National Family Law Program, ch. IV, D1-32 (Federation of Law Societies of Canada and the Canadian Bar Association. Toronto, 1988).

the probability that vesting will not occur). Recognition of the entire value of the benefit, at least where the vesting date and valuation date are close together, may be the favoured approach.[8]

The rationale behind the legislation may be as follows:

Where a plan has not vested the extent of the employer's obligation, should the employee immediately terminate his or her position, is restricted to return of employee contributions only plus earnings. On the other hand, if the employee continues in employment, the employee will eventually become entitled to the accrued employer's contributions, so the unvested portion may ultimately acquire real value, even thought the employer is not presently obligated to pay it. As the time for vesting nears, there is a greater likelihood that vesting will occur. In a number of cases the benefit was not vested on valuation day, but had occurred by trial, thus rendering the previous probability a certainty.[9] Therefore, it has been perceived as unfair and artificial to ignore the value of employer's contributions which have accrued but not vested during the marriage, and the likelihood that vesting will ultimately occur, merely because of the fortuitous timing of the failure of the marriage.

Canadian courts have varied in their approaches to this issue. The British Columbia Court of Appeal has held that the value of a benefit prior to vesting is not necessarily limited to the plan member's contributions plus

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8. Rowland, Susan, "Pension Update: The New Ontario Legislation", unpublished paper presented to the Joint Conference of the C.B.A. (Ont.) and the Law Society of Upper Canada, Mar. 5, 1988, Toronto at 18.

9. E.g., Morgan v. Morgan, Second Supplementary Reasons for Judgment, unreported decision of McKenzie, J., N. 12570, Victoria Registry, June 4, 1986, Vancouver, B.C.

earnings,[10] and as a result the capitalized value of the deferred benefit was calculated and divided notwithstanding that valuation date occurred prior to vesting.[11] Some courts have treated accrued benefits prior to vesting as the equivalent of fully vested benefits[12] while other have excluded them, restricting the asset value to the extent of the member's contributions plus earnings.[13] The only matrimonial property legislation to refer to vesting is the Ontario Family Law Act, 1986, which defines "property" to include, "in the case of spouse's rights under a pension plan that has vested, the spouse's interest in the plan including contributions made by other persons."[14]

American jurisprudence favours "if and when" distributions, avoiding the distinction between vested and unvested contributions and letting both spouses share the risk that vesting will not occur.[15] However, where the value of the pension is relatively small and vesting is a distant event, American courts favour actuarial calculation of the current value of the pension benefit through inclusion of a discount for the probability that employment will be terminated prior to vesting.[16]

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[10] Morgan v. Morgan (1985), 45 R.F.L. (2d) 462 (B.C.C.A.).

[11] Morgan, Second Supplementary Reasons, supra, n. 27.

[12] Reimer v. Reimer, unreported decision, April 25, 1986, decision of Goodman, J., Man. Q.B.; Ryan v. Ryan, unreported decision, Ontario District Court, July 23, 1986, Doyle, J.: Forsk v. Forsk (1988) 11 R.F.L. (3d) 121 (Ont. S.C.); the Institute of Law Research and Reform of Alberta recommended the inclusion in valuation, under limited circumstances, of benefits prior to vesting.

[13] Nix v. Nix, (1987), (1988), 11 R.F.L. (3d) 9 (Ont. H.C.); Aylsworth v. Aylsworth, (1987) 9 R.F.L. (3d) 105 (Ont. H.C.); Lemmon v. Lemmon, supra, n.6, (in dicta only).

[14] Family Law Act, S.O. 1986, c.4, s.4(1)(c).

[15] See the references considered in Whitfield v. Whitfield, (1988) 14 F.L.R. 1139 at 1141 (N.J. App. Div. No. A-1467-85 T 7); see also, Re: Marriage of Brown 15 Cal. 3d 838, 544 P.2d 561 (1976) holding that an unvested interest is a contractual interest and, therefore, a property interest subject to division.

(c) METHODS OF DIVISION AND DISTRIBUTION

* Should legislation permit spouses to choose either the "termination" or "retirement" methods of division and distribution?

* If a choice is permitted, how should costs attaching to the choice be paid: by the parties on direct billing by the plan or through adjustment of benefits or credits; or, by the employer as an employment-related cost?

Division and distribution problems are closely related to the difficulty of valuing the deferred benefit in the final or best earnings type of defined benefit plan, where the pension is vested but not payable. Here, payments will depend on the employee's earnings up to retirement. A final or best earnings plan is structured so as to provide an annual annuity for each year of pensionable service, the amount of which depends on the employee's final or best earnings. At present, capitalization of the value of the deferred benefit is determined by one of two methods: (1) the "termination method" which is based on current earnings i.e. the present value is calculated based on the accrued benefits to which the member would have been entitled if the member had retired on valuation date;[17] or (2) the "retirement method" which assumes that the member will continue employment until retirement (which could be early, normal or late) and calculates the present value based on the member's actual retirement earnings, as projected.[18] Many cases which distribute the benefit pursuant to the "if and when' approach, implicitly incorporate the "retirement method" of valuation where the division formula is applied to the actual benefit as received, which means that it is based on the actual pre-retirement earnings.[19]

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[16] Askins v. Askins, 704 S.W. 2d 632 (Ark. 1986); Robert C.S. v. Barbara J.S., 434 A 2d 383, 7 F.L.R. 2749 (Del. 1981). The Canadian use of actuarial calculations has been recognized: Institute of Law Research and Reform, Matrimonial Property Division: Division of Pension Benefits on Marriage Breakdown, Report No. 48, June , 1986 at 40; see also, Cole, Stephen, "Valuation of Property" in Bissett-Johnson and Holland (ed). Matrimonial Property Law in Canada, (Toronto: Carswell, 1980) at 198.

When pension plan values are being capitalized, either for the purpose of a lump sum buy-out or because the relevant matrimonial property legislation requires it, concerns have been raised about the "retirement method" (1) that it includes increases arising after valuation date; and (2) that it is to some extent speculative because assumptions as to continued employment and salary levels are required.[20]

Arguments in favour of the "retirement method" point out that it accords with the plan formula, which requires a determination of pension benefits to be made at retirement and based on actual pre-retirement earnings. Although both employer and employee may contribute, the employer funds a greater proportion of the benefit in the later years than in the early years. The advantage of this type of plan is that the retiring member begins retirement on a level even with inflation.[21] It may be argued that, during the marriage both spouses expected upon retirement to share in the anti-inflationary benefit derived from this type of plan, in whatever amount was ultimately calculated in accordance with the benefit formula. Similarly, they would have expected to share the disadvantage accruing where the employee-employer relationship is terminated after vesting but prior to retirement, should that event have occurred. However, what might not have been expected was that, on marriage break-down, termination of employment would be "deemed" (it is rare for the end of the marriage and the end of employment to coincide) so as to artificially amend the benefit formula. To share only the termination value on marriage breakdown overlooks the underlying structure of the plan and results in an "unrealistic determination of the pension's value to the owner".[22] Concerns have been expressed about both methods of valuation.[23] At least one court has held that fairness requires a value between the two.[24]

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[17] Aylsworth v. Aylsworth, (1987) 9 R.F.L. (3d) 105 (Ont. H.C.), Humphrey v. Humphrey, (1987) 7 R.F.L. (3d) 113 (Ont. S.C.)

[18] George v. George [1983], 5 W.W.R. 606 (Man. C.A.).

[19] E.g. Rutherford v. Rutherford, [1981] 6 W.W.R. 485 (B.C.C.A.), additional reasons (1981), [1983], 44 B.C.L.R. 279 (B.C.C.A.); McAlister v. McAlister, [1983] 2 W.W.R. 8 (Alta. Q.B.) app'd in Herchuk v. Herchuk (1984), 38 R.F.L. (2d) 240 (Alta. C.A.).

[20] Supra, Aylsworth v. Aylsworth; Humphreys v. Humphreys.

Thus, under the existing jurisprudence, there has been a choice available that has clearly been regarded as offering fairness and flexibility. Should uniform pension division legislation provide the same fairness and flexibility?

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[21] Laurence E. Coward, Mercer Handbook of Candian Pension and Welfare Plans (Toronto, 1984) at 10-11.

[22] Supra, George v. George.

[23] Supra, Aylsworth; Blackwell v. Blackwell (1987), 58 Sask. R. 297 (Sask. U.F.C.); Grainger v. Grainger (1987), 6 R.F.L. (3d) 175 (Sask. C.A.).

[24] Ibid., Blackwell.

The reform legislation in Manitoba, New Brunswick, Nova Scotia and Ontario uses "termination value" calculated as of a specified date and requires either an equal division (Manitoba) or limits the non-member spouse to 50% of the benefit being divided (as in Nova Scotia and Ontario, whereas court orders are not so limited in New Brunswick).

In order for the "retirement" and "if and when" methods of valuation and distribution to be incorporated into an administrative scheme, it would be necessary to develop legislation which provides for both (1) the separation of the interests of the spouses into two accounts and (2) an on-going division of the interests up to maturity, actual termination or death, proportionate to the length of the marriage. None of the Canadian reform provisions have taken that approach. The federal P.B.S.A. and the Manitoba P.B.A. provide for a clear separation of spousal interests but do not take the second step. The Alberta Institute of Law Research and Reform recommended against this approach.[25]

The reasons given for excluding the latter approach reflect either the concerns previously noted or an emphasis on "cost and convenience". In general, pension plan administrators and provincial superintendents of pensions have strongly resisted any on-going division of interests because it would involve the plans with third parties - the non-member spouses. The issue of "costs" is often raised in connection with that concern but no authoritative figures are available. The rough figure of $50 per member-file per annum has been suggested by one actuarial consultant.

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[25] *Supra*, n. 1, Institute Report.

These costs are, however, already being paid in many cases; for example, where life insurance is required pursuant to an "if and when" distribution to protect the interest of the non-member spouse. Indeed, $50 per year might compare quite favourably to these insurance costs. There are also costs otherwise relating to litigation and enforcement issues around the pension. The point is that people seem able to bear related costs. Thus, the cost of administration could be borne by the parties pursuant to a direct billing or a charge against the pension interests. At the same time, an employer who has an employee going through a marriage breakdown is already suffering productivity losses and medical expenses. It may be legitimate to treat this cost as a related similarly absorbable cost of employment.

The Alberta Institute has recommended reducing costs of pension division by establishing annual regulations setting valuation assumptions and provision of actual valuations by pension plan administrators.[26]

The Canadian Institute of Actuories has established a Task Force which is developing "Recommendations concerning the computation of the capitalized value for pension entitlements on marriage breakdown". These Recommendations specifically address the issue of valuation of a benefit on marriage breakdown and provide definitions of both the "termination" and "retirement" methods of valuation. This is a major improvement over the last set of Recommendations which dealt only with Minimum Transfer Values in that it recognizes the unique issues of valuation arising in the context of matrimonial property division. The new Recommendations have yet to come up for consideration and possible adoption by the C.I.A.

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[26] Supra at p.3.

(d) SEPARATION OF SPOUSAL INTERESTS

Any legislation must separate spousal interests so that divorce or a subsequent re-marriage, cohabitation or death of the plan member will not affect the pension interest of his or her spouse or former spouse.

After divorce a spouse ceases to be a "spouse". Therefore, one must either ensure that the definition of "spouse" does, where appropriate, include "former spouses", eschew speaking of spouses and refer "to parties to an order or agreement" or meet the problem through another drafting technique, in order to ensure that the rights of the non-member are not lost because of divorce.

The Federal Pension Benefits standards Act, 1985 (P.B.S.A.)

The federal P.B.S.A. applies, in general terms, to private sector pension plans in industries within federal jurisdiction including banks, airlines, the C.N.R. and the C.B.C. Groups excluded from the P.B.S.A. because of other coverage include the federal civil service, the armed forces, the R.C.M.P., most federal boards and commissions and some federal crown corporations such as Canada Post.

Pension division is provided under s.25: "Subject to this section, pension benefits, pension benefit credits and any other benefits under a pension plan shall, on divorce, annulment or separation, be subject to the applicable provincial property law." "Spouse" is given the "same meaning that it has in the applicable provincial property law" (except for specific purposes). Thus, division under the P.B.S.A. is not mandatory; the rights of cohabitors depends upon provincial law and upon specific provisions in this *Act*.

Notwithstanding provincial property law, however, assignments made to a spouse under the P.B.S.A. effective as of divorce, annulment or separation, are valid to assign all or part of the benefit or benefit credit. This is an exception to the usual rule, found in s.18, proscribing the assignment of pension benefits. An assignment under this section results in the spouse of the member (the "assignee spouse") being deemed to have been a member of the plan and to have terminated membership as of the effective date of the assignment. THe assignee-spouse thus becomes a former member of the plan in questions and entitled, inter alia, to the portability options available under s.26 on termination of membership: to transfer the pension benefit credit to another pension plan, a locked-in R.R.S.P. or to purchase an immediate or deferred life annuity.

This procedure results in a complete separation of the interests of the two spouses. The portion of the benefit assigned to the assignee-spouse is not affected by the remarriage or death of the member-spouse. However, a subsequent spouse of the assignee-spouse is not entitled to any benefits under the plan in respect of the assigned portion.

Under s.25(5) a plan administrator is required to determine and administer the benefit or benefit credit in accordance with an order or agreement, when requested to do so by either spouse. There is no division of the pension and revaluation, as under the assignment clause. Where the order or agreement deals with payments, a joint and survivor benefit may be made payable as two separate pensions but only where the pension plan itself provides for distribution of a pension benefit between spouses. Such provision are rare, as yet, leaving the non-member subject to loss of benefit resulting from the member's acquisition of a new spouse. In any case, the actuarial present value of both portions of the benefit must not total more than that payable to the member, had the divorce, annulment or separation not occurred.

Provincial Approaches

The mandatory Manitoba scheme, under s.31(4), relates the entitlement to the triggering order or agreement, Intervening events such as the death or remarriage of the member do not affect the interest of the non-member. Sec. 23(6) of the P.B.A. provides that entitlement to a division exempts the non-member spouse from rights in a joint and survivor benefit.

The Ontario scheme provides in s.66(3) that "an assignment of an interest in moneys payable" contained in a domestic order or contract, as defined, is an exception to the usual rule that benefits are not assignable. An administrator acting in accordance with that contract or order is, under s. 52(3), discharged. The problem is that the assignment is only effective at times when money is payable i.e. under s. 52(5) where the member terminates employment, and that the section refers only to "spouse". Thus, the section appears to give no rights to divorced persons in the case where employment is terminated.

It is not clear what severance of interests occur where employment continues to retirement. While an assignment directing payment of these moneys is validated by exemption from the usual rule, the legislation does not direct division of the moneys payable into two accounts and require separate payment to be made. Under all reform legislation the normal form of pension is a joint and survivor pension which is ordinarily 60% of the unreduced pension. The "survivor" who takes the benefit entirely upon the death of the member, is the "spouse" living with the plan member on the date that payment of the first installment of the pension is due.

Sec. 52(4) of the Ontario P.B.A. is headed "Revaluation of Joint and Survivor Pension". However, it refers only to pensions in general:

> If a domestic contract or an order mentioned in subsection (1) affects a pension, the administrator of the pension plan shall revalue the pension in the prescribed manner.

No regulations have been prescribed under this section. In comparison, s. 49(13) specifically provides that the right of a spouse to the pre-retirement death benefit is subject to any right or interest in the benefit set out in a marriage contract or order, as defined and therefore, appears to carry into effect a specific assignment under s. 66(3).

Nova Scotia's P.B.A. also refers only to "spouse" without defining it to include "former spouse". The scheme is similar to that of Ontario. Thus, perhaps only non-members holding the current status of "spouse" at the time of actual termination of employment or during payment of the pension, can confidently utilize the section with an expectation of protection.

Under the New Brunswick P.B.A., the non-member's entitlement derives from the court order and shall be dealt with in accordance with the options available on termination of employment. This provision ensures the complete separation of the spouses: for example, the non-member can mature her or his part of the benefit without being tied to the member's date of termination of employment. The failure of the non-member to elect, under s. 44(3), results in a deemed election of a deferred life annuity. Once this procedure is complete, the non-member has no further rights; revaluation of the member's share is in accordance with the regulations.

A number of issues are raised:

* Must the non-member be tied to the members' date of eligibility for retirement? (No (s. 44(2)) in New Brunswick, Yes (s. 61(4)) in Nova Scotia).

* Should there be a deemed election where the non-member fails to elect? (Yes (s. 44(3)) in New Brunswick).

- Must the non-member be tied to the member's employment status in order to acquire eligibility for transfer out of his or her benefit? (Yes Nova Scotia, s. 61(4) and Ontario s. 52(5)).
- Where the member dies before retirement, does the non-member receive or share the death benefit?
- If the non-member dies before receiving the pension does his or her estate receive a refund e.g. of contributions plus interest? (Yes (s. 64(4)(c)) in Nova Scotia).
- Is a subsequent spouse of a non-member entitled to any benefits? (No (s. 64(4)(c)) in Nova Scotia and under (s. 25) of the federal P.B.S.A.).

The usual elections for the non-member are (1) purchase by the plan administrator of a deferred life annuity; or (2) transfer of his or her portion of the pension benefit credits to another pension plan or locked-in R.R.S.P.; or, in Manitoba under s. 31(4), receive a portion of the pension payable.

Provision should be made for the situation where the marriage or relationship breakdown occurs after retirement. Once an annuity has been purchased and a pension is in pay, it is not always possible to obtain subsequent separation of the interests of the spouses through division of the pension into separate accounts (although in practice separate cheques may be sent out). The Manitoba supervisor of pensions has commented that the death of the annuity-holder in those circumstances may leave the non-member at the mercy of the annuity contract. This problem also arises under the federal P.B.S.A.

CLOSING COMMENTS

The Report of the Alberta Institute notes a number of details which drafters must take into account but which are not dealt with in this paper because of space constraints. That Report may serve as a useful checklist of issues for drafters.

There is, for example, the question of whether such provisions would be inserted into matrimonial property statutes or into pensions benefits standards legislation. If included in benefits standards legislation, it might be noted that Nova Scotia has the only pensions benefits statute that contains a section under which an application may be made for division of the pension benefit earned during the marriage. All other pension benefits legislation accepts orders arising out of matrimonial property legislation.

Then there is the question of whether such legislation should deal with all the issues that otherwise rise in the context of a matrimonial property application: exemptions, indexing, disability, severance and bridging benefits.

If it is contemplated that there are requirements which a contract or order must meet in order to qualify under the legislative scheme, these requirements should be clearly stipulated. One might wish to establish conditions under which pre-existing orders or agreements might qualify. This would be particularly useful where pre-existing "if and when" orders or agreements are concerned. Under federal American legislation, a "Qualified Domestic Relations Order" is required in order for registration and for the benefits of the legislative scheme to be obtained. It appears that a number of contracts or orders are not, in fact, meeting the requirement; where it is not possible to obtain an amended order or agreement, serious problems may ensue.

Finally, researchers and practitioners across Canada have agreed that the problem of the separation of the spousal interests in the pension benefit is the one most in need of legislative solution. At the same time, spouses do not fit a common mold. Marriage breakdown happens to couples of all ages with differing levels of accrued pension benefits or pensions and a variety of needs. Legislation that attempts to deal with those issues with clarity and directness is required.

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Table 1

CANADIAN PENSION BENEFITS LEGISLATION*

Jurisdiction	Qualification Date of Legislation	Title and Citation	Effective Date of Pension Reform
Federal	October 1, 1967	Pension Benefits Standards Act S.C. 1986, c.40	January 1, 1987
		Pension Benefits Standards Reg. 1985 SOR/87-19	January 1, 1987
		Amendments to the Canada Pension Plan S.C. 1986, c.38	July 1, 1986
		Canada Pension Plan Reg. C.R.C. 1978, c.385, as amd.	
Alberta	January 1, 1967	Employment Pension Plans Act S.A. 1986, c. E-10.05	January 1, 1987
		Employment Pension Plans Reg. Alta. Reg. 364/86	January 1, 1987
British Columbia	Nil	Nil	Nil
Manitoba	July 1, 1976	Pension Benefits Act R.S.M. 1987, c.P32	January 1, 1984 & January 1, 1985
		Pension Benefits Act Reg. Manitoba Reg. 188/87R	May 25, 1987, as amd.
New Brunswick	January 1, 1989	Pension Benefits Act (to come into force on proclamation S.N.B. 1987, c.P-5.1	tentatively January 1, 1990
		Pension Benefits Act Regulation	In Draft
Newfoundland	January 1, 1985	Pension Benefits Act S.N. 1983, c.32, as amd.	January 1, 1985[1]
		Pension Benefits Act, Regulations, 1985 O.C. 1293-84	January 1, 1985
Nova Scotia	January 1, 1977	Pension Benefits Act S.N.S. 1987, c.11	January 1, 1988
		Regulations under the Pension Benefits Act, O.C. 87-1548	January 1, 1988
Ontario	January 1, 1965	Pension Benefits Act, 1987 S.O. 1987, c.35	January 1, 1988 (some sections have different effective dates)
		Regulation made under the Pension Benefits Act, 1987 O. Reg. 708/87	January 1, 1988, as amd.
Quebec	January 1, 1966	Supplemental Pension Plans Act R.S.Q., c.R-17, as amd.	Nil
		Supplemental Pension Plans Act Reg., R.R.Q., 1981, c.R-17, R.1, as amd.	
Saskatchewan	January 1, 1969	Pension Benefits Act R.S.S. 1978, c.P-6, as amd 1979-80, c.65,s.7	July 1, 1981
		The Pension Benefits Reg. O.C. 733/81, as amd.	July 1, 1981

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[1] The amendments resemble the pre-reform legislation of the other jurisdictions.

* This model was suggested by that contained in the Wyatt Memorandum, Vol. 1, No. 2, October, 1987 at 4.

TABLE 11:

	ONTARIO	NEW BRUNSWICK	NOVA SCOTIA	MANITOBA	FEDERAL P.B.S.A., 1985
Def'n of Spouse/ Common-law Spouse	s.1 - "spouse" - married; conjugal relationship for 3 yrs, or of some permanence if there are children.	s.1(1) "spouse" - married; voidable but not annulled marriage; void marriage with cohabitation in preceding year; conjugal relationship for 3 years or of some permanence if there are children.	s.2(aj) "spouse" - married; voidable but not annulled marriage; void marriage with cohabitation in preceding year; not married to each other or others and living as husband and wife for 3 years.	s.1(1) "common-law spouse", "common law relationship" - publicly represented as spouse for 3 yrs if either unable to marry the other, or 1 yr is not unable to marry. s.23(5) spouse includes common law spouse.	s.2(1) "spouse" - person of opposite sex cohabiting in conjugal relationship at relevant time for at least 1 yr or, if no such person, person married to or party to void marriage with member s.25(1) "spouse" - same as under applicable provincial property law.
Vesting	s.37 - to Dec 31, 1986, "45 and 10" rule; s.38 - after Dec 31, 1986 24 months membership; s.65 - may be shorter than under s.37 and s.38.	s.35(2) - 5 years employment	s.42 - pre Jan 1, 1988 - 10 yrs employment/age 45 ss.41, 43- from Jan 1, 1988 - 24 months membership.	s.21(1) - July 1, 1976 to Dec 31, 1984 - 10 years s.21(2) - from Jan 1, 1985 - 5 yrs continuous service.	s.17(3) - pre Jan 1, 1987 - "45 and 10" rules applies s.17(1) - from Jan 1, 1987 - 2 years membership.
Division on Marriage Breakup	s.52 - division pursuant to domestic contract or court order - not more than 1/2 to non-member spouse. Reg. 52.	s.44 - division pursuant to court order or agreement - no more than 50% reduction in value Regs. unproclaimed.	s.61 - application to court; order apportioning not more than 1/2 to non-member spouse. Reg.46-47.	s.31(2),(3) - separation after Dec 31, 1983; pursuant to order or agreement, divided equally. Reg. 18.	s.25(1),(2)(3) - divisible pursuant to applicable provincial property law. s.25(7) - Jt. & survivor pension may be adjusted to pay two pensions.
Distribution Options on Marriage Breakup	s.52 - can't require payment before payment commences or at normal retirement date - non-member to have same transfer options as member on termination of member's employment. - admin. dischgd. in acc. with contract or order.	s.44(2), s.36 - spouse's portion transferred out to selected option; deemed direction to purchase def. life annuity if no election; s.44(15) - unvested benefit may be paid in cash.	s.61(4) - entitled to pension when payment commences or at normal retirement date; to same options as member on member's termination; estate of non-member entitled to refund of contributions for non-member's share.	s.31(4) - only entitled to receive portion of payments or transfer credit to another pension plan, or retirement benefit plan prescribed by regulations (Reg. 18).	s.25(4)(5) - assign all or part of pension benefit to spouse, who is deemed former member of plan. - plan administrator administers. s.26 - may transfer assigned benefit out; see Reg. 20 & 21.
Valuation on Marriage Breakup (including value of unvested contributions)	Reg. 52 - termination value; consider future vesting.	s.44(1),(5),(8) - termination value of benefits at marriage breakdown s.44(9),44(12) - commuted value of payable pension incls. survivor rights. s.44(15) - unvested contributions not divided s.43(16) - divide accruals between marriage and marriage breakdown. No Regs in force.	Reg. 46 - termination value; consider future vesting.	Reg. 24 - termination value accrued from date of marriage or relationship	s.25(8) - aggregate actuarial present value of each spouse's pension benefits not to be greater than value of benefit that would have been payable to member alone. s.25(7) - joint and survivor pension to be split only if aggregate value of each spouse's pension not less than actuarial value of joint and survivor pension benefit.

"registered pension plan".—"registered pension plan" means a pension plan that is registered and in respect of which a certificate of registration has been issued by the Superintendent under this Act;

"retire". — "retire" has the meaning assigned by subsection (3);

"spouse". — "spouse", in relation to a member or former member, means, except in section 25,

(*a*) if there is no person described in paragraph (*b*), a person who is married to the member or former member or who is party to a void marriage with the member or former member, or

(*b*) a person of the opposite sex who is cohabiting with the member or former member in a conjugal relationship at the relevant time, having so cohabited with the member or former member for at least one year,

and "marriage" (except as used in paragraph (*a*) of this definition) and "remarriage" have corresponding meanings;

"standards for registration". — "standards for registration" has the meaning assigned by section 13;

"Superintendent".—"Superintendent" means the Superintendent of Financial Institutions;

"termination".—"termination", in relation to a pension plan, means the cessation of crediting of benefits to plan members generally, and includes the situations described in subsections 29(1) and (2);

"winding-up".—"winding-up", in relation to a pension plan, means the distribution of the assets of a pension plan that has been terminated;

"Year's Maximum Pensionable Earnings".—"Year's Maximum Pensionable Earnings" has the same meaning as in the *Canada Pension Plan*.

(1987, c. 23, s. 41.)

[¶ 19-752]

(2) *Cessation of membership in a pension plan*.—For the purposes of this Act, a member of a pension plan shall be deemed to cease membership in the plan

(*a*) in the case of a multi-employer pension plan, when no contributions have been made in respect of that member by any of the participating employers for a period of twenty-four months, or such shorter period as is provided under the plan, and the member is not in receipt of an immediate pension benefit;

(*b*) in the case of any other pension plan, when the member's employment with the employer terminates and the member is not in receipt of an immediate pension benefit, whether or not contributions by the employer in respect of that member had ceased previously; or

(*c*) in any other prescribed circumstance.

[¶ 19-753]

(3) *Meaning of "retire"*.—For the purposes of this Act, a member of a pension plan shall be deemed to retire on commencing to receive an immediate pension benefit, whether the member's employment has terminated or not.

(1987, c. 23, s. 41.)

[¶ 19-754]

Sec. 3. Pension plans may exceed minimum requirements. — The requirements of this Act and the regulations shall not be construed as preventing the registration or operation of a pension plan containing provisions that are more advantageous to members of the plan, former members or potential members or their spouses, beneficiaries or estates.

[¶ 19-755]

Application of Act

Sec. 4. Application of Act. — (1) This Act applies in respect of pension plans.

[¶ 19-756]

(2) *Definition of "pension plan"*.—In this Act, "pension plan" means a superannuation or other plan organized and administered to provide pension benefits to employees employed in included employment (and former employees) and to which the employer is required under or in accordance with the plan to contribute, whether or not provision is also made for other benefits or for benefits to other persons, and includes a supplemental pension plan, whether or not

have been paid by employer premiums, calculated in a manner satisfactory to the Superintendent, but

(*d*) the actuarial present value of that reduction may not exceed the amount of the payment to which the surviving spouse is entitled under the group life insurance plan; and

(*e*) in the case of a contributory pension plan, the reduction may not reduce the benefit payable to the surviving spouse to an amount less than the aggregate of the member's required contributions together with interest in accordance with section 19.

[¶ 19-839]

Remarriage of Former Spouse or Surviving Spouse

Sec. 24. Remarriage not to terminate pension benefit.—A pension benefit payable to the former spouse of a member or former member or to the surviving spouse of a deceased member or former member shall not terminate by reason only of the remarriage of the former spouse or surviving spouse, as the case may be.

[¶ 19-840]

Distribution of Pension Benefits and Pension Benefit Credits on Divorce, Annulment or Separation

Sec. 25. Definitions.—(1) In this section,

"provincial property law". — "provincial property law" means the law of a province relating to the distribution, pursuant to court order or agreement between the spouses, of the property of the spouses on divorce, annulment or separation;

"spouse".—"spouse" has

(*a*) in the definition "provincial property law" in this subsection, the same meaning that it has in the applicable provincial property law, regardless of whether the provincial property law uses the word "spouse" or uses another expression, and

(*b*) in subsections (2) to (8),

(i) in relation to a court order, the same meaning that it has in the applicable provincial property law, regardless of whether the provincial property law uses the word "spouse" or uses another expression, or

(ii) in relation to an assignment or agreement referred to in this section, the same meaning as in the definition "spouse" in subsection 2(1).

[¶ 19-841]

(2) *Application of provincial property law.* —Subject to this section, pension benefits, pension benefit credits and any other benefits under a pension plan shall, on divorce, annulment or separation, be subject to the applicable provincial property law.

[¶ 19-842]

(3) *Non-application of this Act.* — A pension benefit, pension benefit credit or other benefit under a pension plan that is subject to provincial property law pursuant to this section is not subject to the provisions of this Act relating to the valuation or distribution of pension benefits, pension benefit credits or other benefits under a pension plan, as the case may be.

[¶ 19-843]

(4) *Power to assign to spouse.*—Notwithstanding anything in this section or in provincial property law, a member or former member of a pension plan may assign all or part of that person's pension benefit, pension benefit credit or other benefit under the plan to that person's spouse, effective as of divorce, annulment or separation, and in the event of such an assignment the spouse shall, in respect of the assigned portion of the pension benefit, pension benefit credit or other benefit, be deemed for the purpose of this Act, except subsections 21(2) to (6),

(*a*) to have been a member of that pension plan, and

(*b*) to have ceased to be a member of that pension plan as of the effective date of the assignment,

but a subsequent spouse of that spouse is not entitled to any pension benefit, pension benefit credit or other benefit under the pension plan in respect of that assigned portion.

[¶ 19-844]

(5) *Duty of administrator.* — Where, pursuant to this section, all or part of a pension benefit, pension benefit credit or other benefit under a pension plan of a member or former member is required to be distributed to that person's spouse under a court order or an agreement between the spouses, the administrator, on receipt of

(*a*) a written request from either the member or former member or that person's spouse that all or part of the pension benefit, pension benefit credit or other benefit, as the case may be, be distributed in accordance with the court order or the agreement, and

(*b*) a copy of the court order or agreement,

shall determine and henceforth administer the pension benefit, pension benefit credit or other benefit, as the case may be, in prescribed manner, in accordance with the court order or the agrement; however, in the case of a court order, the administrator shall not administer the pension benefit, pension benefit credit or other benefit in accordance with the court order until all appeals therefrom have been finally determined or the time for appealing has expired.

[¶ 19-845]

(6) *Other spouse to be notified.* — On receipt of a request referred to in subsection (5), the administrator shall notify the non-requesting spouse of the request and shall provide that spouse with a copy of the court order or agreement submitted in support of the request, but this requirement does not apply in respect of a request or an agreement received by the administrator in a form or manner that indicates that it was jointly submitted by the two spouses.

[¶ 19-846]

(7) *Splitting of joint and survivor pension benefit.*—A pension plan may provide that, where, pursuant to this section, all or part of a pension benefit of a member or former member is required to be distributed to that person's spouse under a court order or an agreement between the spouses, a joint and survivor pension benefit may be adjusted so that it becomes payable as two separate pensions, one to the member or former member and the other to that person's spouse, if the aggregate of the actuarial present values of the two pensions is not less than the actuarial present value of the joint and survivor pension benefit.

[¶ 19-847]

(8) *Limitation.* — Notwithstanding subsection (2), the aggregate of

(*a*) the actuarial present value of the pension benefit or other benefit paid to the member or former member, and

(*b*) the actuarial present value of the pension benefit or other benefit paid to the spouse of the member or former member

pursuant to this section shall be not greater than the actuarial present value of the pension benefit or other benefit, as the case may be, that would have been payable to the member or former member had the divorce, annulment or separation not occurred.

[¶ 19-848]

Portability of Pension Benefit Credits

Sec. 26. Where member not yet eligible to retire. — (1) Where a member, before becoming eligible to retire pursuant to subsection 16(2), ceases to be a member of a pension plan or dies, the member or the surviving spouse, as the case may be, is entitled

(*a*) to transfer the member's pension benefit credit (or the surviving spouse's pension benefit credit, whichever is applicable) to another pension plan, if that other plan permits,

(*b*) to transfer the member's pension benefit credit (or the surviving spouse's pension benefit credit whichever is applicable) to a registered retirement savings plan of the prescribed kind for the member or surviving spouse, as the case may be, or

(*c*) to use the member's pension benefit credit (or the surviving spouse's pension benefit credit, whichever is applicable) to purchase an immediate or deferred life annuity of the prescribed kind for the member or surviving spouse, as the case may be,

if the member or the surviving spouse notifies the administrator of such desire, in prescribed form and within ninety days after

[¶ 20-709]

Sec. 59. Prohibition and effect of assignment, etc. — (1) Subject to subsection (2), benefits, money that has been transferred under section 29(2), 30, 31(4) or 55(4) or pursuant to a similar transfer made before January 1, 1987 and money earned by such transferred money may not be assigned, charged, alienated or anticipated and are exempt from execution, seizure or attachment, and any transaction purporting to assign, charge, alienate or anticipate benefits or any such money is void.

[¶ 20-710]

(2) *Exception.*—Subsection (1) does not apply to additional voluntary contributions.

[¶ 20-711]

(3) *Void transaction.* — Any transaction purporting to effect a withdrawal, surrender or commutation referred to in section 27(1) is void.

[¶ 20-712]

(4) *Arrangement not to withhold.*—Where this Act requires an amount to be withheld, deducted, paid or credited, any agreement or arrangement by the person on whom the requirement is imposed not to withhold, deduct, pay or credit that amount is void.

[¶ 20-713]

Sec. 60. Matrimonial property orders. — Subject to section 59(1), the entitlement of any person to receive a benefit under a pension plan is subject to entitlements arising under a matrimonial property order within the meaning of the *Matrimonial*

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(*c*) a flat benefit plan under which the pension benefits are expressed either as a fixed amount in respect of each year of employment or as a fixed periodic amount, and

(*d*) a deferred profit sharing pension plan other than a profit sharing plan as defined in paragraph 147(1)(*b*) of the *Income Tax Act* (Canada);

"qualification date" means

(*a*) in respect of employment in Manitoba, July 1, 1976, and

(*b*) in respect of employment in a designated province, the date upon which, under the law of that province, a pension plan is required to maintain its qualification for registration;

"registered pension plan" means a pension plan that is registered with and certified by the commission as a plan organized and administered in accordance with this Act;

"service for a continuous period" means service for a period of time without regard to periods of temporary suspension of employment;

"superintendent" means the Superintendent of Pensions;

"supplemental pension plan" means a pension plan established for employees whose membership in another pension plan is a condition precedent to membership in the supplemental pension plan;

"surplus" when applied to a pension plan means the excess, determined at the time of a review, of the value of the assets of the plan, excluding the present value of outstanding special payments, over the value of the liabilities of the plan in respect of service rendered by employees and former employees prior to that time;

"temporary suspension of employment" means a period not exceeding 52 consecutive weeks during which a person who immediately before the period was employed by an employer is not performing duties as an employee of the employer and after the expiry of which the person is again employed by the employer, except where an actual termination of the employment of the person has occurred, and includes any leaves of absence authorized by the employer or required by law to be granted which do not extend the period to more than 52 consecutive weeks;

"voluntary additional contribution" means an additional contribution by an employee to or under a pension plan except a contribution the payment of which, under the terms of the plan imposes upon the employer an obligation to make a concurrent additional contribution to or under the plan.

[¶23-600a]

(2) *Period of common-law relationship.*—For the purposes of applying this Act and the regulations to a pension plan or a member of a pension plan, the period during which a member of a pension plan shall be considered a party to a common-law relationship commences on the day on which the administrator of the pension plan receives a declaration in the form prescribed in the regulations declaring that the member is a party to a common-law relationship with another person identified in the declaration and ending on the day the member notifies the plan administrator in writing that the existence of the common-law relationship has been terminated.

[¶23-601]

Sec. 2. Province of employment.—For the purposes of this Act, a person shall be deemed to be employed in the province in which the establishment of his employer to which he reports for work is situated, and, where the employee is not required to report for work at any establishment of his employer, he shall be deemed to be employed in the province in which the establishment of his employer from which his remuneration is paid is situated.

[¶23-602]

Sec. 3. Conflict with other Acts.—In the event of conflict between any provision of this Act and any provision of any other Act, the provision of this Act prevails.

[¶23-603—23-609] Reserved

PART I

[¶23-610]

Sec. 4. Commission continued.—(1) The Pension Commission of Manitoba, composed of not fewer than five and not more than nine members as the Lieutenant Governor in Council may determine, is continued.

[¶ 23-681]

(2) *Payroll deductions.*—For the purposes of subsection (1), any sum withheld by an employer for pension purposes, whether by payroll deduction or otherwise, from moneys payable to an employee shall be deemed to be a sum received by the employer from the employee.

[¶ 23-682]

(3) *Employer's contributions in trust.*—Any sum required to be paid into a pension plan by an employer as the employer's contribution to the pension plan shall, when due under the pension plan, be deemed to be held by the employer in trust for payment of the same into the pension plan in accordance with the pension plan and this Act and the regulations as the employer's contribution, whether or not the amount thereof has been kept separate and apart by the employer, and the employer shall not appropriate or convert any part of the amount required to be paid to the pension plan to his own use or to any use not authorized by the terms of the pension plan.

[¶ 23-682a]

(4) *Enforcement of trust.*—Notwithstanding that the government is not a beneficiary of the trusts deemed to be created under this section, the minister, for and on behalf of the government, may enforce those trusts and for that purpose the government has a lien and charge in the amount of the sums deemed to be held in trust on the assets of the employer that in the ordinary course of business would be entered in the accounts of the business of the employer whether so entered or not.

[¶ 23-682b]

(5) *Payment of trust moneys.*—Where under this section the government recovers any moneys deemed to be held in trust under this section, the moneys shall be paid, after deductions of any costs and disbursements incurred by the government in recovering the moneys, to the trustees of the pension plan or, if there are no trustees of the pension plan other than the employer, to the commission as the agency to hold the moneys and disburse the pension benefits under the pension plan.

[¶ 23-682c]

(6) *Report on late payments.*—Where an employer fails to remit any amount which he is required under a pension plan to remit to the trustee or the person charged with the investment of the funds of the pension plan within 60 days after the date on which the amount is required to be remitted, the trustee or the person charged with the investment of the funds of the pension plan shall forthwith notify the superintendent in writing of the failure in the form prescribed by the regulations.

[¶ 23-683]

Sec. 29. Information by employers.—Every employer shall, in accordance with the regulations provide such information pertaining to pension plans and pension benefits to such person in such circumstances as is prescribed in the regulations.

[¶ 23-684—23-688] Reserved

[¶ 23-689]

Sec. 30. Inspection of plan by members.—A member of a registered pension plan or his agent authorized in writing may inspect and make extracts from the pension plan or any documents related thereto in accordance with the regulations.

[¶ 23-690]

Sec. 31. Pension benefits not alienable.—(1) Subject to subsection (2), moneys payable under a pension plan shall not be assigned, charged, anticipated or given as security and are exempt from execution, seizure or attachment, and any transaction purporting to assign, charge, anticipate or give as security such moneys is void.

[¶ 23-690a]

(2) *Division of pension benefits on marriage breakup.*—Subject to subsection (3), where

(*a*) pursuant to an order of the Court of Queen's Bench made under *The Marital Property Act*, family assets of a person are required to be divided; or

(*b*) pursuant to an agreement between spouses, family assets of the spouses are divided between the spouses; or

(*c*) pursuant to an agreement between two persons who have been parties to a common-law relationship and who have terminated the relationship, assets which, if the parties had been spouses, would have been family assets of the parties, are divided between the parties;

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the pension benefit credit of the spouses or the parties, as the case may be, in a pension plan, or any payment, due to them under a pension plan, shall be divided between them, and the division shall be made in the manner prescribed in the regulations notwithstanding that the order or the agreement, as the case may be, may require the division to be made in a different manner.

[¶ 23-690aa]

(3) *Effective date of subsection (2).*—Subsection (2) does not apply except in the case of

(*a*) spouses; or

(*b*) parties to a common-law relationship;

as the case may be, who began living separate and apart from each other after December 31, 1983.

[¶ 23-690b]

(4) *Transfer of marital property portions.*—Where under an order or agreement of the kind mentioned in subsection (2), a person becomes entitled to a portion of a pension benefit credit of a member or former member of the pension plan, the person is only entitled, notwithstanding any other provision of this Act or of the pension plan, to receive a portion of the payments payable under the pension plan or to transfer the portion of the pension benefit credit to which the person is entitled

(*a*) to another pension plan in which the person is a member or former member, if that is permitted by the terms of that other pension plan; or

(*b*) to a retirement benefit plan of a type prescribed in the regulations.

[¶ 23-690c]

Sec. 32. Establishment of advisory committees.—(1) Where a pension plan registered under this Act has more than 20 members, and the plan is not administered by a board composed of almost equal numbers of representatives of the employer and representatives of the members of the pension plan or by a corporation the board of directors or governing board of which is similarly composed, if a majority, or a representative of the majority of the members of the pension plan request the employer in writing to establish an advisory committee, the employer shall establish an advisory committee consisting of representatives of the employer and an equal number of representatives of the members.

[¶ 23-690d]

(2) *Purposes of committee.*—The purposes of an advisory committee established under subsection (1) are

(*a*) to promote understanding and awareness of the pension plan among the members thereof;

(*b*) to study and make recommendations respecting improvements for the administration of the pension plan;

(*c*) to monitor the administration of the pension plan including, without limiting the generality of the foregoing,

(i) the maintenance of the assets of the pension plan,

(ii) the investment of the assets of the pension plan,

(iii) the documentation for the pension plan,

(iv) the interpretation of rules respecting the operation of the pension plan,

(v) the compliance with the requirements or need for financial statements and actuarial evaluations,

(vi) the actions taken in respect of information receiving from accountants, auditors and actuaries,

(vii) the compliance with the requirements of this Act and the regulations with respect to reporting, filing and registration, and

(viii) the provision of relevant information to members of the pension plan in compliance with this Act and the regulations; and

(*d*) to report to the superintendent any instance of non-compliance with this Act or the regulations.

[¶ 23-690e]

(3) *Limitation on committee's powers.*—An advisory committee established under this section has no authority in respect of investment decisions or strategy or funding decisions or strategy.

[¶ 23-888]

(9) [*Termination statement*]. — Every employer shall provide to each active member who terminates active membership in the employer's pension plan prior to the commencement of pension, either through termination of employment or termination of the plan, within 60 days of the notification of such termination, a statement indicating

(*a*) the amount of deferred pension, if any, to which the member is entitled, the date on which this deferred pension would normally commence and the provisions, if any, for early commencement of this deferred pension;

(*b*) the commuted value of such deferred pension;

(*c*) the amount of cash lump sum settlement to which the member is entitled and the deferred pension, if any, which will remain if a cash lump sum settlement is elected;

(*d*) the commuted value of such remaining deferred pension;

(*e*) if a full or partial deferred pension is elected, the benefit if death occurs prior to the commencement of the deferred pension;

(*f*) the options under the plan for the disposition of the cash lump sum settlement and the commuted value of the deferred pension; and

(*g*) the name and address of the party responsible for payment of the deferred pension.

[¶ 23-889]

(10) [*Statement at plan member's death*]. —Where a member of a pension plan dies, the employer shall provide to the legally authorized representative of the member, within 30 days of proper notification of the death, a statement indicating

(*a*) the amount, if any, and method of payment of the survivor's benefit;

(*b*) the amount of lump sum settlement, if any; and

(*c*) the options under the plan for the disposition of the lump sum settlement.

[¶ 23-890]

24. Division of pension benefits on marriage breakup.—(1) For the purposes of subsection 31(2) of the Act, the pension benefit credit to be divided between the spouses or the parties shall be calculated on the basis that the member's employment had terminated

(*a*) as of the date the spouses began living separate and apart; or

(*b*) as of the date that the common-law relationship terminated pursuant to subsection 1(2) of the Act;

as the case may be.

.01 Historical comment.

Ss. 24(1), (2), (4) and (5) were amended by Reg. 223/88, effective June 10, 1988.

[¶ 23-890a]

(2) [*Payments due*]. — For the purposes of subsection 31(2) of the Act, "payments due" means the aggregate annual, monthly or other periodic amount which a member or former member of a pension plan is receiving from a pension plan.

.01 Historical comment.

Ss. 24(1), (2), (4) and (5) were amended by Reg. 223/88, effective June 10, 1988.

[¶ 23-891]

(3) [*Equal division of pension benefit credit*].—The division of the pension benefit credit calculated under subsection (1) and of payments due as defined under subsection (2) shall be on an equal basis between the spouses and such division shall apply only in respect of that portion of the pension benefit credit and payments due which was accrued from the date that, as the case may be, the marriage or common-law relationship began.

[¶ 23-891a]

(4) [*Benefit to include interest*]. — Where a person becomes entitled to a benefit as a result of the division of a pension benefit credit or payment due under subsection 31(2) of the Act, the benefit payable shall include interest at the rate, and in the manner, described under section 22 of the Act.

.01 Historical comment.

Ss. 24(1), (2), (4) and (5) were amended by Reg. 223/88, effective June 10, 1988.

[¶ 23-892]

(5) [*Retirement benefit plan*]. — For the purposes of clause 31(4)(*b*) of the Act, the retirement benefit plan shall be a registered retirement savings plan which shall be sub-

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ject to the provisions of section 18 of this regulation.

.01 Historical comment.

Ss. 24(1), (2), (4) and (5) were amended by Reg. 223/88, effective June 10, 1988.

[¶ 23-893]

25. Designated provinces and territories.—The provinces and territories of Canada designated as provinces or territories, as the cases may be, in which there is in force legislation substantially similar to the Act are

(*a*) the Province of Alberta;

(*b*) the Province of Nova Scotia;

(*c*) the Province of Ontario;

(*d*) the Province of Quebec;

(*e*) the Northwest Territories and Yukon Territories;

(*f*) the Province of Saskatchewan; and

(*g*) the Province of Newfoundland.

[¶ 23-894]

26. Plans excluded from funding requirement.—Pension plans designated as being excepted from the application of clause 26(1)(*a*) of the Act are

(*a*) the Civil Service Superannuation Plan which is implemented through *The Civil Service Superannuation Act*;

(*b*) the Teachers' Pension Plan which is implemented through *The Teachers' Pensions Act*; and

(*c*) the Pension Plan for Members of the Legislative Assembly which is implemented through Part II of *The Legislative Assembly Act*.

.01 Historical comment.

S. 26 was amended by Reg. 223/88, effective June 10, 1988.

[¶ 23-895]

27. Waiver of joint pension. — For the purposes of subsection 23(3) of the Act a pension plan may provide for a retiring married employee to receive a pension benefit that does not continue to be paid for the lifetime of the surviving spouse where the administrator of the plan receives a written waiver that

(*a*) is signed by the spouse of the retiring employee in the presence of a witness and apart from the retiring employee not more than 15 days after receipt of the retirement statement referred to in subsection 23(8);

(*b*) contains a statement indicating that the spouse of the retiring employee is aware of the right of the spouse to a pension benefit upon the death of the retiring employee and intends to waive that right; and

(*c*) is signed by the retiring plan member.

.01 Historical comment.

S. 27 was amended by Reg. 223/88, effective June 10, 1988.

[¶ 23-896]

28. Common-law declaration. — For the purpose of subsection 1(2) of the Act, where a member of a pension plan wishes to make a declaration that he has become a party to a common-law relationship, such declaration shall be made in the following form:

I, (NAME OF PLAN MEMBER), being a member of the (NAME OF PLAN), do hereby declare declaration that I have entered into a common-law relationship with (NAME OF COMMON-LAW SPOUSE), and have satisfied the conditions specified in the definition of common-law spouse in subsection 1(1) of the Act.

....
Signature of Plan Member

....
Date of Declaration

[¶ 23-897—24-499] Reserved

[The next page is 7841.]

(*a*) is in receipt of a pension payable from the pension fund, or

(*b*) is entitled to a deferred pension payable from the pension fund;

"*Income Tax Act*" means the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

"insurance company" means a corporation authorized to undertake life insurance in Canada;

"joint and survivor pension" means a pension payable to the person entitled to the pension until that person or the person's spouse dies and after that in whole or in part for life to the survivor of the person and the person's spouse;

"member" means a member of a pension plan;

"Minister" means the Minister of Labour and includes any person designated by the Minister to act on behalf of the Minister;

"multi-employer pension plan" means a pension plan established and maintained for employees of two or more employers who contribute or on whose behalf contributions are made to a pension fund by reason of agreement, municipal by-law or statute to provide a pension benefit that is determined by employment with one or more of the employers, but does not include a pension plan where all the employers are affiliates within the meaning of the *Business Corporations Act*;

"*Old Age Security Act*" means the *Old Age Security Act*, chapter O-6 of the Revised Statutes of Canada, 1970;

"normal retirement date" means the date or age specified in a pension plan as the normal retirement date of members;

"pension" means a pension benefit that is being paid;

"pension benefit" means the aggregate monthly, annual, or other periodic amounts payable, other than ancillary benefits, to a member or former member of a pension plan during the lifetime of the member or former member, to which the member or former member will become entitled under the pension plan upon attainment of the normal retirement date, within ten years before that date or at any time after that date;

"pension fund" means the fund maintained to provide benefits under or related to a pension plan;

"pension plan" means a plan to provide pensions for members of the plan under which the employer or employers of the members are required to make contributions, but does not include

(*a*) an employees' profit sharing plan or a deferred profit sharing plan as defined in sections 144 and 147 of the *Income Tax Act*,

(*b*) a plan to provide a retiring allowance as defined in subsection 248(1) of the *Income Tax Act*, or

(*c*) any other prescribed arrangement;

"prescribed" means prescribed by regulation under section 100;

"Québec Pension Plan" means the *Loi sur le régime de rentes du Québec*, chapter R-9 of the Revised Statutes of Québec, 1977;

"reciprocal transfer agreement" means an agreement related to two or more pension plans that provides for the transfer of money or credit for employment or both in respect of individual members of the plans;

"spouse" means either of a man and a woman who

(*a*) are married to each other,

(*b*) are married to each other by a marriage that is voidable and has not been avoided by a declaration of nullity,

(*c*) have gone through a form of marriage with each other in good faith that is void and have cohabited within the preceding year, or

(*d*) not being married to each other, have cohabited

(i) continuously for a period of not less than three years in a conjugal relationship in which one person has been substantially dependent upon the other for support, or

(ii) in a relationship of some permanence where there is a child born of whom they are the natural parents,

and have cohabited within the preceding year;

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member is entitled to payment equal in amount to not less than sixty per cent of the commuted value of the deferred pension, which value shall be terminated on the same basis as if the member had terminated employment immediately before the member's death.

[¶ 25-129]

(3) Where a member of a pension plan is not entitled to a deferred pension under section 35 and dies while employed, the spouse of the deceased member is entitled to payment of the deceased member's contributions with interest.

[¶ 25-130]

(4) A member or former member may designate a beneficiary and the beneficiary is entitled to the payment referred to in subsection (1), (2) or (3), as the case may be.

[¶ 25-131]

(5) A designation under subsection (4) has no effect if the member or former member has a spouse at the date of death.

[¶ 25-132]

(6) Where the member or former member does not have a spouse at the date of death and has not designated a beneficiary under subsection (4), the payment shall be made to the estate of the member or former member.

[¶ 25-133]

(7) Where the member or former member is covered by a group life insurance plan sponsored, and paid for wholly or in part, by the employer, and the benefit to the surviving spouse, the designated beneficiary or the estate under that plan is at least equal to the benefit referred to in subsection (1) or (2), a pension plan may provide that the benefit referred to in subsection (1) or (2) does not apply and the administrator shall pay to the surviving spouse, designated beneficiary or the estate, as the case may be, a sum equal to the contributions of the member or former member with interest.

[¶ 25-134]

(8) Where the member or former member is covered by a group life insurance plan sponsored, and paid for wholly or in part, by the employer and the benefit to the surviving spouse, the designated beneficiary or the estate under that plan is less than the benefit referred to in subsection (1) or (2), a pension plan may provide that the benefit referred to in subsection (1) or (2) shall be reduced by the amount of the benefit under the group life insurance plan.

[¶ 25-135]

(9) Where the contributions with interest of the member or former member are in excess of those required for the benefit referred to in subsection (1), (2) or (8), the administrator shall pay that excess to the surviving spouse, designated beneficiary or the estate, as the case may be.

[¶ 25-136]

(10) This section applies only in respect of deaths occurring after the commencement of this section.

MARRIAGE BREAKDOWN

[¶ 25-137]

Sec. 44. (1) If a court, on an application to divide marital property under the *Marital Property Act* or under similar legislation in another jurisdiction, makes an order in relation to benefits under a pension plan, the commuted value of the benefits shall be determined in accordance with this Act and the regulations as of the date of marriage breakdown and shall be divided in accordance with the order of the court.

[¶ 25-138]

(2) The portion of the benefits to which a non-member spouse is entitled pursuant to a court order referred to in subsection (1) shall be dealt with in accordance with section 36.

[¶ 25-139]

(3) If the non-member spouse fails to direct the administrator of the pension plan in relation to the manner in which the non-member spouse's entitlement is to be dealt with under section 36, the non-member spouse shall be deemed to have directed the administrator to purchase a deferred life annuity.

[¶ 25-140]

(4) If benefits under a pension plan have been divided in accordance with subsection (1), the non-member spouse has no further

right under the pension plan and the member or former member's benefits shall be revalued accordingly.

[¶ 25-141]

(5) If a marriage contract or a separation agreement as defined in the *Marital Property Act* provides for the division of benefits under a pension plan on marriage breakdown, the commuted value of the benefits shall be determined as of the date of marriage breakdown in accordance with this Act and the regulations and shall be divided in accordance with the marriage contract or separation agreement.

[¶ 25-142]

(6) A division of benefits under a pension plan on marriage breakdown pursuant to a marriage contract or a separation agreement shall not result in a reduction of the commuted value of a member's or former member's benefits by more than fifty per cent.

[¶ 25-143]

(7) Subsections (2), (3) and (4) apply with the necessary modifications to a division of benefits under subsection (5).

[¶ 25-144]

(8) The commuted value of benefits for the purposes of this section that are not deferred pensions shall be determined as if the member had terminated employment on the date of marriage breakdown.

[¶ 25-145]

(9) If a court, on an application to divide marital property under the *Marital Property Act* or under similar legislation in another jurisdiction, makes an order in relation to a pension under a pension plan, the commuted value of the pension, taking into account any survivor rights under the pension plan, shall be determined in accordance with this Act and the regulations as of the date of marriage breakdown and shall be divided in accordance with the order of the court.

[¶ 25-146]

(10) The value of the pension determined under subsection (9) that is to be attributed to the spouse of the former member shall be dealt with in accordance with section 36 and the spouse shall have no further right under the pension plan and the pension of the former member shall be revalued accordingly.

[¶ 25-147]

(11) If the spouse of the former member fails to direct the administrator of the pension plan in relation to the manner in which the spouse's entitlement is to be dealt with under section 36, the spouse shall be deemed to have directed the administrator to purchase a deferred life annuity.

[¶ 25-148]

(12) If a marriage contract or a separation agreement as defined in the *Marital Property Act* provides for the division of a pension under a pension plan on marriage breakdown, the commuted value of the pension, taking into account any survivor rights under the pension plan, shall be determined as of the date of marriage breakdown in accordance with this Act and the regulations and shall be divided in accordance with the marriage contract or separation agreement.

[¶ 25-149]

(13) A division of a pension on marriage breakdown pursuant to a marriage contract or a separation agreement shall not result in a reduction of the commuted value of a former member's pension by more than fifty per cent.

[¶ 25-150]

(14) Subsections (10) and (11) apply with the necessary modifications to a division of a pension under subsection (12).

[¶ 25-151]

(15) If a member would not be entitled to a deferred pension under section 35 on termination of employment, the portion of the member's contributions with interest to be attributed to the non-member spouse may be paid out in cash.

[¶ 25-152]

(16) A division of benefits, including a pension, or contributions under this section applies only in relation to benefits or contributions accrued between the date of marriage and the date of marriage breakdown.

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[¶ 25-153]

(17) The division of benefits, including pensions, or contributions under this section is limited by any restrictions imposed by this Act or the regulations in relation to the payment of money out of a pension fund.

[¶ 25-154]

(18) Revaluation of a benefit or pension pursuant to this section shall be in accordance with the regulations.

[¶ 25-155]

Sec. 45. Where a marriage contract, a separation agreement or an order referred to in section 44 provides for payment by the member or former member of a sum equal to and in lieu of the amount owing to the member's or former member's spouse in relation to a pension or benefit, the administrator and the pension fund are not liable for any payments.

EQUALITY PROVISIONS

[¶ 25-156]

Sec. 46. (1) The sex of a member, former member or other beneficiary under a pension plan shall not be taken into account in

- (*a*) determining the amount of contributions required to be made by a member of the plan,
- (*b*) determining the pension benefits or the commuted value of pension benefits that a member, former member or other beneficiary is or may become entitled to,
- (*c*) the provision of eligibility conditions for membership, or
- (*d*) the provision of ancillary benefits.

[¶ 25-157]

(2) In order to comply with subsection (1), the administrator may

- (*a*) use annuity factors that do not differentiate as to sex,
- (*b*) provide for employer contributions that vary according to the sex of the employee, or
- (*c*) use any prescribed method of calculation or valuation.

[¶ 25-158]

Sec. 47. Section 46 applies in respect of contributions, benefits and conditions in relation to

- (*a*) employment after the commencement of that section,
- (*b*) employment before the commencement of that section in so far as it is dealt with in an amendment made to the pension plan after the commencement of that section, and
- (*c*) employment before the commencement of that section in so far as it is dealt with in a pension plan established after the commencement of that section.

INTEGRATION

[¶ 25-159]

Sec. 48. (1) If a pension plan provides that a pension or a deferred pension may be reduced by reason of payments under the *Canada Pension Plan*, the *Quebec Pension Plan*, or under the *Old Age Security Act*, the reduction shall not exceed the sum of

- (*a*) the amount payable under the *Canada Pension Plan* or the *Quebec Pension Plan* calculated at termination of employment, retirement or death, multiplied by the ratio of the number of years, including parts of a year, of employment credited under the pension plan after December 31, 1965 over thirty-five, and
- (*b*) the amount payable under the *Old Age Security Act*, calculated at termination of employment, retirement or death, multiplied by the ratio of the number of years, including parts of a year, of employment credited under the pension plan up to the commencement of this section over thirty-five.

[¶ 25-160]

(2) The ratio referred to in paragraphs (1)(*a*) and (*b*) shall not exceed one.

[¶ 25-161]

(3) The reduction referred to in subsection (1) shall be applied before any other adjustments required under the pension plan.

[¶ 25-162]

(4) The amount of the reduction referred to in subsection (1) shall not be

(ii) is in receipt of a pension payable from the pension fund,

(iii) is entitled to commence receiving payment of pension benefits from the pension fund within one year after termination of employment or membership, or

(iv) is entitled to receive any other payment from the pension fund;

(*s*) "insurance company" means a corporation authorized to undertake life insurance in Canada;

(*t*) "joint and survivor pension" means a pension payable until the death of the member or former member or the death of the spouse of the member or former member, whichever occurs later;

(*u*) "member" means a member of the pension plan;

(*v*) "Minister" means the Minister of Finance;

(*w*) "multi-employer pension plan" means a pension plan established and maintained for employees of two or more employers who contribute or on whose behalf contributions are made to a pension fund by reason of agreement, statute or municipal by-law to provide a pension benefit that is determined by service with one or more of the employers, but does not include a pension plan where all the employers are affiliates of each other;

(*x*) "normal retirement date" means the date or age specified in the pension plan as the normal retirement date of members;

(*y*) "partial wind up" means the termination of part of a pension plan and the distribution of the assets of the pension fund related to that part of the pension plan;

(*z*) "participating employer" means an employer required to make contributions to a multi-employer pension plan;

(*aa*) "pension" means a pension benefit that is in payment;

(*ab*) "pension benefit" means the aggregate monthly, annual or other periodic amounts payable to a member or former member during the lifetime of the member or former member, to which the member or former member will become entitled under the pension plan upon attainment of the normal retirement date or to which any other person is entitled upon the death of a member or former member;

(*ac*) "pension committee" means a committee that is an administrator;

(*ad*) "pension fund" means the fund maintained to provide benefits under or related to a pension plan;

(*ae*) "pension plan" means a plan organized and administered to provide pensions for members and under which the employer of the member is required to make contributions, and includes a multi-employer pension plan but does not include

(i) an employees' profit-sharing plan or a deferred profit-sharing plan as defined in sections 144 and 147 of the *Income Tax Act* (Canada),

(ii) a plan to provide a retiring allowance as defined in subsection 248(1) of the *Income Tax Act* (Canada), or

(iii) any other prescribed type of plan;

(*af*) "prescribed" means prescribed by the regulations;

(*ag*) "qualification date" means, in respect of the Province, the first day of January, 1977, and, in respect of a designated province, the date on which under the law of the designated province a pension plan must be registered by the proper authority in the designated province;

(*ah*) "reciprocal transfer agreement" means an agreement related to two or more pension plans that provides for the transfer of money or credits for employment in respect of individual members;

(*ai*) "registration" means registration pursuant to this Act;

(*aj*) "spouse" means either of a man and woman who

(i) are married to each other,

(ii) are married to each other by a marriage that is voidable and has not been annulled by a declaration of nullity,

(iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or, if they have ceased to cohabit, have

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cohabited within the twelve-month period immediately preceding the date of entitlement, or

(iv) not being married to each other and neither being married to another person have lived together as husband and wife for three years and are living together as husband and wife at the relevant time;

(*ak*) "Superintendent" means the Superintendent of Pensions;

(*al*) "surplus" means the excess of the value of the assets of a pension fund over the value of the liabilities under the pension plan, both calculated in the prescribed manner;

(*am*) "termination" includes retirement and death;

(*an*) "trade union" has the same meaning as in the *Trade Union Act;*

(*ao*) "wind up" means the termination of a pension plan in whole or in part and the distribution of the assets of the pension fund;

(*ap*) "year's maximum pensionable earnings" has the same meanings as in the *Canada Pension Plan.*

[¶ 29-602]

Sec. 3. (1) For the purposes of this Act, a person is deemed to be employed in the province in which the establishment of the employer is located and to which the person is required to report for work.

[¶ 29-603]

(2) A person who is not required to report for work at an establishment of the employer is deemed to be employed in the province in which is located the establishment of the employer from which the person's remuneration is paid.

APPLICATION

[¶ 29-604]

Sec. 4. (1) This Act applies to every pension plan that is provided for persons employed in the Province.

[¶ 29-605]

(2) Without restricting the generality of subsection (1), this Act applies to the City of Halifax Superannuation Plan and that Plan is deemed to be registered pursuant to this Act on, from and after the first day of January, 1988, and is deemed to be amended as of that date to comply with this Act and the regulations and shall accordingly be read, construed, interpreted and given effect on, from and after that date.

[¶ 29-606]

Sec. 5. This Act and the regulations shall not be construed to prevent the registration or administration of a pension plan and related pension fund that provide pension benefits or ancillary benefits more advantageous to members than those required by this Act and the regulations.

ADMINISTRATION OF ACT

[¶ 29-607]

Sec. 6. The Minister has the general supervision and management of this Act and the regulations.

[¶ 29-608]

Sec. 7. Subject to the approval of the Governor in Council, the Minister may

(*a*) enter into agreements with a designated province or the Government of Canada to provide for the reciprocal application and enforcement of pension benefits legislation, the reciprocal registration, audit and inspection of pension plans and for the establishment of a Canadian association of pension supervisory authorities;

(*b*) authorize a Canadian association of pension supervisory authorities to carry out such duties on behalf of the Minister as the Minister may require;

(*c*) delegate to or accept delegation from a pension supervisory authority, a designated province or the Government of Canada of such functions and powers pursuant to this Act as the Minister may determine.

[¶ 29-609]

Sec. 8. (1) A Superintendent of Pensions, who shall be the chief administrative officer, and such officers and employees as are necessary to enable the Superintendent to perform the duties of the Superintendent by a pension plan in relation to payment under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada) shall not exceed the reduction calculated in accordance with the prescribed formula.

[¶ 29-765]

(2) The reduction referred to in subsection (1) shall be applied prior to any other adjustments required under the pension plan.

[¶ 29-766]

(3) The amount of a reduction in a pension or deferred pension required under a pension plan in relation to the payments mentioned in subsection (1) shall not be increased by reason of an increase in the amount of any of the other payments after the date of the member's termination of employment.

[¶ 29-767]

(4) A pension plan for registration of which application is made on or after the first day of January, 1988, shall not permit the reduction of a pension or a deferred pension based on a person's entitlement under the *Old Age Security Act* (Canada).

[¶ 29-768]

(5) Subsection (4) does not apply to a pension plan that is a successor of a pension plan registered pursuant to Chapter 14 of the Acts of 1975 that permitted such a reduction.

[¶ 29-769]

(6) A pension plan shall not permit the reduction of a pension or deferred pension based on a person's entitlement under the *Old Age Security Act* (Canada) in respect of a benefit accrued on or after the first day of January, 1988.

[¶ 29-770]

(7) The value of a bridging benefit, for receipt of which a member or former member has satisfied all eligibility requirements of the pension plan before the first day of January, 1988, shall not be reduced by reason only of the eligibility of the member or former member to receive a payment before reaching sixty-five years of age under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada).

[¶ 29-771]

(8) Where a pension plan provides a bridging benefit without reference to a specific age at which payment of the bridging benefit is to be reduced or to cease, the pension plan is deemed to provide that the bridging benefit shall be reduced or cease to be paid when the recipient of the bridging benefit reaches sixty-five years of age.

[¶ 29-772]

(9) Subsection (8) ceases to apply to a pension plan that is amended on or after the first day of January, 1988, to establish a specific age for the purpose of determining when a bridging benefit shall be reduced or cease to be paid.

[¶ 29-773]

(10) Where a pension plan provides for variation of a pension benefit by reason of a benefit payable under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada) without specifically stating the age at which the variation is to occur, the pension plan is deemed to provide that the variation is to occur when the recipient of the pension benefit reaches sixty-five years of age.

[¶ 29-774]

(11) Subsection (10) ceases to apply to a pension plan that is amended on or after the first day of January, 1988, to specifically state the age at which variation of a pension benefit is to occur.

PENSION ENTITLEMENT ON MARRIAGE BREAKDOWN

[¶ 29-775]

Sec. 61. (1) In this Section,

(*a*) "court" means the Trial Division of the Supreme Court;

(*b*) "pension benefit earned during the marriage" means the prescribed proportion of the pension benefit earned during

(i) marriage, or

(ii) cohabitation for three years or more as husband and wife by a member or former member and a person of the opposite sex.

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[¶ 29-776]

(2) Where a member or former member is entitled to a pension benefit and

(*a*) a petition for divorce is filed;

(*b*) an application is filed for a declaration of nullity; or

(*c*) the member or former member and that person's spouse have been living separate and apart and there is no reasonable prospect of the resumption of cohabitation,

that person's spouse may apply to the court for a division of the pension benefit earned during the marriage.

[¶ 29-777]

(3) The court may, having regard to all the circumstances, order that the spouse of the member or former member shall receive such proportion, not exceeding one half, of the pension benefit earned during the marriage as the court may order.

[¶ 29-778]

(4) Where, pursuant to this Section, a court orders the division of a pension benefit earned during the marriage,

(*a*) the spouse is entitled to payment of a pension based on that division commencing on

(i) the date on which payment of a pension to the member or former member commences, or

(ii) the normal retirement date of the member or former member,

whichever is earlier;

(*b*) the spouse is entitled, upon the member or former member being so entitled pursuant to subsection (1) of Section 50, to require the administrator to pay the commuted value of that spouse's pension pursuant to that subsection;

(*c*) the estate of the spouse of the member or former member is entitled to a refund of the contributions plus interest made in respect of that spouse's proportion of the pension benefit earned during the marriage if the spouse dies before receiving the pension;

(*d*) a subsequent spouse of the spouse of the member or former member is not entitled to any pension benefit or other benefit under the pension plan;

(*e*) the pension of the spouse is not affected by the death of the member or former member;

(*f*) the pension of the member or former member is not affected by the death of the spouse;

(*g*) the pension of the spouse is deemed to be a deferred pension benefit for the purpose of subsection (4) of Section 17;

(*h*) the administrator of the pension plan shall provide prescribed information to the spouse.

[¶ 29-779]

(5) Except as otherwise provided by the pension plan, a court order respecting the division of a pension benefit earned during the marriage does not entitle the spouse of the member or former member to other pension benefits under the plan.

[¶ 29-780]

(6) Nothing in this Section precludes a division of assets pursuant to Section 13 of the *Matrimonial Property Act* in settlement of the value to either spouse of any pension or other benefit under a pension plan which, by reason of the termination of the marriage relationship, that spouse will lose the chance of acquiring, and where there is an unequal division upon such grounds subsections (1) to (5) do not apply.

CONTRIBUTIONS

[¶ 29-781]

Sec. 62. (1) A pension plan is not eligible for registration unless it provides for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the pension plan in accordance with this Act and the regulations.

[¶ 29-782]

(2) An employer required to make contributions under a pension plan, or a person required to make contributions under a pension plan on behalf of an employer, shall make the contributions in the prescribed manner and in accordance with the prescribed requirements for funding

(*a*) to the pension fund; or

B = number of years, not exceeding 35, including parts of a year, of employment credited to the person under the pension plan; and

(*b*) If the plan has prior to 1 January 1988, an offset for OAS, the amount calculated according to the following formula:

$$C \times \frac{D}{35}$$

where C = amount of pension payable under the OAS calculated as of the date of termination of the person's employment or membership;

D = number of years, not exceeding 35, including parts of a year, of employment credited to the person under the pension plan before the 1st day of January 1988.

Individual Level Premium Contracts

[¶30-145]

43. Where a pension plan is insured by individual level premium contracts, the deferred pension referred to in sections 42 and 43 of the Act may, in the case of a contract issued prior to the qualification date, be equal to the paid up annuity under the contract arising from contributions made with respect to employment on or after the qualification date if the special payments required with respect to such deferred pension under the contract have all been paid or shall continue to be paid.

Pension Fund Trustee

[¶30-146]

44. A pension fund shall be administered,

(*a*) by a government,

(*b*) by an insurance company,

(*c*) by a trust in Canada governed by a written trust agreement under which the trustees are,

(i) a trust corporation registered under the *Trust and Loan Corporations Act*;

(ii) three or more individuals, at least three of whom reside in Canada and at least one of whom is independent of any employer contributing to the pension fund, to the extent the individual is neither a significant shareholder, partner, proprietor, director, officer, nor an employee of an employer contributing to the fund or an affiliate of such employer; or

(iii) a corporate pension society (established under the *Pension Fund Societies Act* (Canada);

(*d*) under the *Government Annuities Act* (Canada);

(*e*) by a board, agency, commission, or corporation made responsible by an Act of the Legislature for the administration of the pension fund; or

(*f*) by any combination of the above.

[¶30-147]

Plan Fiscal Year End

45. Unless otherwise stated in the pension plan documents, the fiscal year of a pension plan shall be deemed to commence on the 1st day of January and end on the 31st day of December and, except on such basis as may be authorized by the superintendent, no fiscal year of a pension plan shall exceed twelve months.

Accrual During Spousal Relationship

[¶30-148]

46. For purposes of section 61 of the Act (pension benefits accrued during period of spousal relationship), the pension benefits accrued during the period a member had a spouse shall be determined as if the member terminated employment at the valuation date in accordance with the terms of the plan at that date and without consideration of future benefits, salary or changes to the plan but with consideration for the possibility of future vesting.

[¶30-149]

47. For purposes of determining a joint and survivor pension under Section 52(1) of the Act, the pension shall be based on the spouse of the member at the beginning of the period for which a pension first becomes payable.

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[¶ 33-030]

"pension committee" means a committee that is the administrator of a pension plan;

[¶ 33-031]

"pension fund" means the fund maintained to provide benefits under or related to the pension plan;

[¶ 33-032]

"pension plan" means a plan organized and administered to provide pensions for employees, but does not include,

(*a*) an employees' profit sharing plan or a deferred profit sharing plan as defined in sections 144 and 147 of the *Income Tax Act* (Canada) (R.S.C. 1952, c. 148),

(*b*) a plan to provide a retiring allowance as defined in subsection 248 (1) of the *Income Tax Act* (Canada) (R.S.C. 1952, c. 148),

(*c*) a plan under which all pension benefits are provided by contributions made by members, or

(*d*) any other prescribed type of plan;

[¶ 33-033]

"prescribed" means prescribed by the regulations;

[¶ 33-034]

"qualification date" means, in respect of Ontario, the 1st day of January, 1965, and, in respect of a designated province, the date on which under the law of the designated province a pension plan must be registered by the proper authority in the designated province;

[¶ 33-035]

"reciprocal transfer agreement" means an agreement related to two or more pension plans that provides for the transfer of moneys or credits for employment or both in respect of individual members;

[¶ 33-036]

"registration" means registration under this Act;

[¶ 33-037]

"regulations" means regulations made under this Act;

[¶ 33-038]

"spouse" means either of a man and woman who,

(*a*) are married to each other, or

(*b*) are not married to each other and are living together in a conjugal relationship,

(i) continuously for a period of not less than three years, or

(ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the *Family Law Act, 1986* (1986, c. 4);

[¶ 33-039]

"Superintendent" means Superintendent of Pensions;

[¶ 33-040]

"surplus" means the excess of the value of the assets of a pension fund related to a pension plan over the value of the liabilities under the pension plan, both calculated in the prescribed manner;

[¶ 33-041]

"termination", in relation to employment, includes retirement and death;

[¶ 33-042]

"trade union" has the same meaning as in the *Labour Relations Act* (R.S.O. 1980, c. 228);

[¶ 33-043]

"wind up" means the termination of a pension plan and the distribution of the assets of the pension fund;

[¶ 33-044]

"Year's Maximum Pensionable Earnings" has the same meaning as in the *Canada Pension Plan* (R.S.C. 1970, c. C-5).

[¶ 33-216]

(15) *Definition*.—In this section, "personal representative" has the same meaning as in the *Estates Administration Act* (R.S.O. 1980, c. 143).

[¶ 33-217]

Sec. 50. Variation of payment to disabled person.—A pension plan may permit variation in the terms of payment of a pension or deferred pension by reason of the mental or physical disability of a member or former member that is likely to shorten considerably the life expectancy of the member or former member.

[¶ 33-218]

Sec. 51. Commuted value.—(1) A pension plan may provide for payment to a former member of the commuted value of a benefit if the annual benefit payable at the normal retirement date is not more than 2 per cent of the Year's Maximum Pensionable Earnings in the year that the former member terminated employment.

[¶ 33-219]

(2) *Idem*.—A pension plan registered before the date on which this Act comes into force may provide that upon termination of employment a person entitled to a deferred pension under section 37 (deferred pension) is entitled to payment of an amount not greater than 25 per cent of the commuted value of the deferred pension.

[¶ 33-220]

Sec. 52. Payment on marriage breakdown.—A domestic contract as defined in Part IV of the *Family Law Act, 1986* (1986, c. 4) or an order under Part I of that Act is not effective to require payment of a pension benefit before the earlier of,

(*a*) the date on which payment of the pension benefit commences; or

(*b*) the normal retirement date of the relevant member or former member.

[¶ 33-221]

(2) *Maximum percentage*.—A domestic contract or an order mentioned in subsection (1) is not effective to cause a party to the domestic contract or order to become entitled to more than 50 per cent of the pension benefits, calculated in the prescribed manner, accrued by a member or former member during the period when the party and the member or former member were spouses.

[¶ 33-222]

(3) *Discharge of administrator*.—If payment of a pension or a deferred pension is divided between spouses by a domestic contract or an order mentioned in subsection (1), the administrator is discharged on making payment in accordance with the domestic contract or order.

[¶ 33-223]

(4) *Revaluation of joint and survivor pension*.—If a domestic contract or an order mentioned in subsection (1) affects a pension, the administrator of the pension plan shall revalue the pension in the prescribed manner.

[¶ 33-224]

(5) *Transfer*.—A spouse on whose behalf a certified copy of a domestic contract or order mentioned in subsection (1) is given to the administrator of a pension plan has the same entitlement, on termination of employment by the member or former member, to any option available in respect of the spouse's interest in the pension benefits as the member or former member named in the domestic contract or order has in respect of his or her pension benefits.

[¶ 33-225]

Sec. 53. Discrimination on basis of sex.—(1) The sex of a member, former member or other beneficiary under a pension plan shall not be taken into account in,

(*a*) determining the amount of contributions required to be made by a member of the plan;

(*b*) determining the pension benefits or the commuted value of pension benefits that a member, former member or other beneficiary is or may become entitled to;

(*c*) the provision of eligibility conditions for membership; and

(*d*) the provision of ancillary benefits.

[¶ 33-226]

(2) *Administration*.—In order to comply with subsection (1), the administrator may,

benefit without reference to a specific age at which the benefit is reduced or ceases, is sixty-five years of age.

[¶33-664]

(3) Subsection (2) does not apply to a pension plan that is amended after the 31st day of December, 1986 to establish a specific age prior to the attainment of sixty-five years or to provide for the occurrence of a specific event for the purpose of determining when a bridging benefit shall be reduced or cease to be paid.

Variation of Pension Benefits

[¶33-665]

48.—(1) The age at which a variation shall be deemed to occur in a pension plan that provides that a pension benefit may be varied as the result of retirement benefits payable under the *Canada Pension Plan* or the *Quebec Pension Plan* where the pension plan does not state the specific age at which the variation is to occur, is sixty-five years of age.

[¶33-666]

(2) Subsection (1) does not apply to a pension plan that is amended after the 31st day of December, 1986 to establish a specific age or to provide for the occurrence of a specific event for variation of the pension benefit prior to the recipient attaining sixty-five years of age.

[¶33-667]

(3) A pension plan that provides a pension benefit that may be varied as a result of a recipient's entitlement to a retirement pension under the *Canada Pension Plan* or the *Quebec Pension Plan* prior to attaining the age of sixty-five years shall take into account the adjustment made to the retirement pension under the *Canada Pension Plan* or the *Quebec Pension Plan*.

Individual Level Premium Contracts

[¶33-668]

49. A deferred pension referred to in sections 37 and 38 of the Act provided under a pension plan that is insured by individual level premium contracts may, in the case of an individual level premium contract issued prior to the qualification date, be equal to the paid up annuity under the contract arising from contributions made with respect to employment on or after the qualification date if the special payments required with respect to the deferred pension under the contract have all been paid or will continue to be paid.

Pension Fund Trustee

[¶33-669]

50. A pension fund shall be administered only,

(*a*) by a government;

(*b*) by an insurance company;

(*c*) by a trust in Canada governed by a written trust agreement under which the trustees are,

(i) a trust corporation registered under the *Loan and Trust Corporations Act*,

(ii) three or more individuals, at least three of whom reside in Canada and at least one of whom is independent of any employer contributing to the pension fund, to the extent the individual is neither a significant shareholder, partner, proprietor, director, officer, nor an employee of an employer contributing to the fund or an affiliate of the employer, or

(iii) a corporate pension society (established under the *Pension Fund Societies Act* (Canada));

(*d*) under the *Government Annuities Act* (Canada);

(*e*) by a board, agency, commission or corporation made responsible by an Act of the Legislature for the administration of the pension fund; or

(*f*) by any combination referred to in clauses (*a*) to (*e*).

Plan Fiscal Year End

[¶33-670]

51.—(1) Unless otherwise stated in the pension plan documents, the fiscal year of a pension plan shall be deemed to commence on the 1st day of January and end on the 31st day of December.

[¶33-671]

(2) No fiscal year of a pension plan shall exceed twelve months.

Accrual During Spousal Relationship

[¶33-672]

52. For purposes of subsection 52(2) of the Act, the pension benefits accrued during the period a member had a spouse shall be determined as if the member terminated employ-

ment at the valuation date in accordance with the terms of the plan at that date and without consideration of future benefits, salary or changes to the plan but with consideration for the possibility of future vesting.

Filing of Reciprocal Transfer Agreements

[¶33-673]

53.—(1) The administrator of a pension plan shall submit for filing a certified copy of any reciprocal transfer agreement entered into prior to this Regulation coming into force within six months after this Regulation comes into force.

[¶33-674]

(2) The administrator of a pension plan shall submit for filing a certified copy of any reciprocal agreement entered into on or after the date this Regulation comes into force within sixty days after the execution of the agreement.

Additional Ancillary Benefits

[¶33-675]

54. The following are prescribed as ancillary benefits for purposes of section 41 of the Act:

1. Survivor benefits in excess of those required under subsection 45(3) of the Act.
2. Any vesting provisions in excess of those required under sections 36, 37 and 38 of the Act.

Refund of Contributions Not Locked In

[¶33-676]

55. Subsection 64(1) of the Act does not apply to a refund to a person who is entitled to a pension or deferred pension of contributions made to a pension plan that provides,

(*a*) in respect of contributions made prior to the 1st day of January, 1987, vesting prior to the member reaching the age of forty-five years and having ten years of employment with the employer or ten years of membership in the plan;

(*b*) in respect of contributions made on or after the 1st day of January, 1987, vesting prior to twenty-four months membership in the plan; and

(*c*) for the refund of contributions made prior to a vesting period referred to in clause (*a*) or (*b*).

Notice of Default — Multi-Employer Pension Plan

[¶33-677]

56. The period of time prescribed for the purpose of subsection 57(3) of the Act is 120 days.

Apportionment of Benefits — Final Average or Best Average Earnings Plans

[¶33-678]

57. For purposes of section 40 of the Act, the portion of the pension benefit attributable to employment after the 1st day of January, 1987 in a pension plan that provides a pension benefit based on a rate of remuneration of a plan member as of the date that the plan member terminates employment or that is based on an average of the rates of remuneration of a plan member over a specified or limited time period up to the date the plan member terminates employment is,

(*a*) the pension benefit,

less,

(*b*) the pension benefit calculated in accordance with the terms of the plan at the 31st day of December, 1986 using the rate of remuneration of the plan member as of the date of termination of employment or the average of the rates of remuneration of the plan member over the specified or limited time period, as the case may be.

Reciprocal Transfer Agreement — 50 per cent Rule

[¶33-679]

58. Subsection 40(3) of the Act does not apply to the transfer of money or credits from one pension plan to another plan in accordance with a reciprocal transfer agreement.

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APPENDIX C

BRITISH COLUMBIA LONG TERM DISABILITY PLAN

your LONG TERM DISABILITY PLAN – EXCLUDED

Province of British Columbia
Superannuation Commission

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Long Term Disability Plan

Benefits

The Long Term Disability (LTD) Plan provides for the continuation of income in the event that an employee becomes totally disabled due to illness or injury.

For the purposes of the Plan, "total disability" means the complete inability because of an accident or sickness of a covered employee to perform all the duties of his or her occupation for the first two years of disability. Thereafter, disability means the inability because of accident or sickness of a covered employee to perform the duties of any gainful occupation for which he/she is suited by education, training, or experience and the rate of pay for which is at least 75% of the current rate of pay of their regular occupation.

The Plan covers all regular employees who work in a position that requires at least half-time work on a regularly scheduled basis and have completed six months active service in such a position.

Coverage in the Plan is a condition of employment for all eligible regular employees of the Government of the Province of British Columbia whose eligibility has been established by:

- a collective agreement, or
- the Employer.

Benefits are payable under the Plan to totally disabled employees after the employee has been totally disabled for at least seven months.

An employee covered under this Plan who becomes totally disabled and remains disabled after the expiration of the required seven month disablement period will, upon application and claim approval, be entitled to receive a monthly benefit as follows:

- While the employee has a sick bank balance to be used on a day for day basis, full monthly earnings will be paid until the sick bank is exhausted.
- When an employee has no sick bank, or after it is exhausted, the employee shall receive a monthly benefit equal to the sum of:

(i) 68.3 percent of the first $2200 of monthly earnings, and

(ii) 50 percent of monthly earnings above $2200.

Example No. 1. Employee's monthly earnings are $1891.
Plan benefit is:
68.3% x $1891 = $1291.55.

Example No. 2. Employee's monthly earnings are $2600.
Plan benefit is:
68.3% x $2200 = $1502.60
50% x $400 = $ 200.00
Total $1702.60

Long Term Disability benefits will be paid so long as the employee remains totally disabled and will cease on the date the employee recovers, or at the end of the month in which the employee reaches normal retirement age, resigns or dies, whichever event occurs first.

NOTE: (a) Monthly earnings will be the employee's basic monthly earnings in effect for the last month of STIIP, or equivalent seven month period, taking into consideration any retroactive adjustments.

(b) Benefit payments will be paid at the end of the month by automated deposit to your bank, trust company or credit union account.

Application for Benefits

The Superannuation Commission will provide the necessary Long Term Disability Plan claim forms to employees who have been in receipt of benefits under the Short Term Illness and Injury Plan for a period of at least four calendar months and who are expected to continue to receive benefits under the Short Term Illness and Injury Plan for the maximum period of seven months.

The disabled employee must complete the claim forms and submit them to the Superannuation Commission for consideration by the carrier selected to conduct the claims adjudication function under the Plan. The carrier will then contact the employee directly if further information is required in order to process the claim. Benefit payments will be made directly from the carrier to eligible disabled employees.

It is important to supply any information requested by the carrier as soon as possible to avoid payment delays.

Any fees charged by the physician for completion of claim forms or provision of information to the carrier are the responsibility of the claimant.

Long Term Disability claims will be adjudicated and paid by the Carrier:

The Great-West Life Assurance Company
#1210-1177 West Hastings Street
Vancouver, British Columbia
V6E 4J7

Appeals

In the event that a covered employee disputes a decision made by the carrier, the employee has the right to appeal. The employee can request the claim be reviewed by a special committee set up for such purposes. The committee consists of three medical doctors; one designated by the claimant, one by the employer, and a third agreed to by the first two. The right of appeal must be exercised within six months of the date the claims paying agent informed the employee that his/her claim has been rejected or terminated.

Rehabilitation

To facilitate the rehabilitation of disabled employees receiving a benefit under the Plan, there is a special provision dealing with the manner in which Plan benefits are adjusted for any outside earnings of a disabled employee.

An employee who becomes totally disabled and who, during the period of disability engages in rehabilitative employment (see note), will have the monthly benefit from the Plan reduced by 25% of earnings from such rehabilitative employment. If the income from such rehabilitative employment and the benefits paid under this Plan exceed 85% of the employee's earnings at the date of disability, the benefits under the Plan will be further reduced by the excess amount.

The rehabilitative employment of a disabled employee will continue until the employee's earnings from such employment exceed 85% of earnings at the date of disability, but, in no event for more than 24 months from the date rehabilitative employment commences.

NOTE: Rehabilitative employment means any occupation or employment for wage or profit or any course or training that entitles the disabled employee to an allowance, provided such rehabilitative employment has the approval of the employee's doctor and the Employer.

Other Employee Benefits

An employee, while in receipt of LTD benefits is considered an employee for the purposes of the Public Service Superannuation Plan. Superannuation contributions are not required, however, the employee will be credited with pensionable service while in receipt of benefits from the LTD plan. The employee will continue to be covered by the Group Life Insurance Plan, Dental Plan, Extended Health Care Plan and Medical Plan, with any required employee premiums being waived. The LTD plan pays these premiums.

NOTE: If you have Spouse and Dependent coverage under the Group Life Insurance Plan, you are responsible for paying the $2.00 a month premium.

With the exception of the above, employees will not be covered by any other portion of their terms and conditions of employment, but will retain seniority rights should they return to active employment within six (6) months following the cessation of benefits.

Exclusion from Coverage

Long Term Disability benefits will not be paid for total disabilities resulting from:

(a) War, insurrection, rebellion or service in the armed forces of any country;

(b) Voluntary participation in a riot or civil commotion except while an employee is in the course of performing the duties of his or her occupation;

(c) Intentionally self-inflicted injury or illness;

(d) Pregnancy, childbirth, miscarriage, or abortion except severe complications following termination of pregnancy (intention is no coverage for normal pregnancy);

(e) A disability known to the Employer and which was specifically taken into account by the Employer at time of hiring;

(f) In the case of employees hired after April 1, 1977, a condition which existed and for which medical treatment, services or supplies were received in the 90-day period prior to the date of hire, unless the employee has completed 12 consecutive months of service and during which time the employee was not absent from work due to the aforementioned condition.

Integration with other Disability Income

If a totally disabled employee becomes entitled to any other disability income as a result of the same accident or sickness for which benefits are being received under this Plan, the benefits under this Plan will be reduced by 100% of such other income. Other disability income includes:

(a) Any amount payable under any Workers' Compensation Act or law or any other similar legislation;

(b) Any amount received from group insurance, wage continuation or pension plan providing disability or retirement income.

(c) Any amount of disability income provided by any compulsory Act or law;

(d) Any periodic primary benefit payment from the Canada or Quebec Pension Plans or other similar type of plan of any country to which the disabled employee would be entitled; (it is encumbent on the employee to apply for Canada Pension Plan disability benefits or other such benefits when making application for Long Term Disability)

(e) Any amount of disability income provided by any group or association disability plan to which the employee might belong or subscribe.

(f) Personal insurance will be integrated to the extent that the combination of Plan benefits and personal insurance disability income benefits exceed the greater of either:

  (i) 100 percent of basic pay, or

  (ii) the applicable benefit percentage of the individual average total monthly income in the twelve month period immediately preceding commencement of the disability.

NOTE: ICBC weekly indemnity payments and third party wage loss settlements are considered personal insurance.

Medical Examinations

The employer has the right, at his own expense, to request a medical doctor appointed by the Employer to examine as often as reasonably required, any employee whose injury or sickness is the basis of a claim under this Plan.

Coverage During Leave of Absence and Lay-Off

An employee on approved leave of absence without pay may elect to retain coverage under the Plan and shall pay the full cost except when on approved maternity leave. Coverage will be permitted for a period of 18 months of absence without pay, except if the absence is for education purposes in which case the period will be extended to 24 months. The monthly cost of coverage will be equal to 1% of the employee's last full month's regular rate of pay which immediately precedes the leave of absence.

A regular employee may maintain coverage for a maximum period of 3 months following the month in which layoff occurred provided premiums are paid to Superannuation Commission. The address of the Superannuation Commission is:

Attention: Employee Benefits	Superannuation Commission 548 Michigan Street Victoria, British Columbia V8V 4R5

The telephone number is 387-1002
or 1-800-663-8823

Termination of Coverage

An employee shall cease to be covered by this Plan at the earlier of the following:

- on termination of employment with the Employer;
- for non-payment of premiums while on leave of absence or layoff;
- on the date of the commencement of paid absence prior to retirement; or
- on the date that is seven months prior to the employee's normal retirement age.

NOTE: Cessation of active employment as a regular employee shall be considered to be termination of employment.

Termination of Payment of LTD Benefits

Benefits under the Long Term Disability Plan may be suspended when an employee has not completed an application for alternate suitable employment (Placement before Rehabilitation Committee). Refer to your Employer Policy Directive for additional information. Benefits under the Long Term Disability Plan will no longer be payable when an employee ceases to be disabled as defined in the Plan

or at the end of the month when

- an employee reaches normal retirement age.
- an employee dies;
- an employee resigns.

Benefits will not be paid when an employee is serving a prison sentence.

NOTE: Benefits may be suspended if an employee fails to meet the requirements of the Rehabilitation Committee.

THIS PAMPHLET IS NOT A LEGAL DOCUMENT.

IN THE EVENT OF A CONFLICT CONCERNING THE CONTENTS OF THIS PAMPHLET, THE PROVISIONS OF THE COLLECTIVE AGREEMENTS, PLAN CONTRACTS AND/OR REGULATIONS WILL APPLY.

APPENDIX D

BACKGROUNDER: INVESTMENT DIVERSIFICATION

BACKGROUNDER: INVESTMENT DIVERSIFICATION

JUNE 16, 1989

Bill 37
Proposed Amendments to Section 36 of the *Financial Administration Act*

Tab 1	Background on the Amendments
Tab 2	Why Diversify Investment Portfolios?
Tab 3	Amended Section 36, Annotated
Tab 4	Schedule III to the regulations under the *Pension Benefits Standards Act, 1985* (Canada)

BACKGROUND TO THE AMENDMENTS

INTRODUCTION

Section 36 of the Financial Administration Act is being amended to facilitate the government's proposed investment diversification program. The diversification program is focused on the public sector pension funds; however, it is also relevant to other long term investment portfolios managed by the Ministry of Finance and Corporate Relations.
The diversification program will allow the Minister to pursue prudent investment management strategies consistent with those employed by private and public sector pension funds in Canada.

The amendments provide the Minister a greater range of investment classes for pension funds and greater flexibility in how investments are managed. This will enable the Minister to exercise better control over investment risk while seeking higher rates of return on investments.

Section 36 (1) and (2) of the Financial Administration Act currently restricts the Minister's investment activity to government guaranteed securities and high quality short term debt instruments. Present legislation also permits investment in some common and preferred shares, corporate bonds and mortgages subject to the relatively restrictive criteria for eligibility under the Trustee Act.

GOVERNMENT ADMINISTERED INVESTMENTS

The Ministry of Finance and Corporate Relations administers or oversees the investment of approximately $18.6 billion. These funds can be broken down as follows:

Pension Funds	$10.1 Billion
Sinking Funds	$ 3.7 Billion
Workers' Compensation Board	$ 2.8 Billion
Other Funds	$ 2.0 Billion

PUBLIC SECTOR PENSION FUNDS

The Ministry manages the investment of the following pension funds:

Teachers	$ 2.5 Billion
Colleges	$ .2 Billion
Municipal Employees	$ 3.3 Billion
Public Service Employees	$ 3.1 Billion
B.C. Hydro	$ .7 Billion
BC Rail Ltd	$ .2 Billion
Other	$ .1 Billion
Total	$10.1 Billion

All of the pension plans are of the defined benefit type. With a defined benefit plan the basic pension benefit, which is guaranteed by the employer, is determined by a formula usually based on the number of years of service and the final salary level. The investment performance of the pension fund does not affect the level of basic benefits. Some pension plans have inflation indexing schemes that are tied to financial market conditions.

The pension fund is a pool of money from which future pension benefits are expected to be paid. Contributions are made to the fund by employees and the employer and a minimum rate of return must be earned on those contributions for the fund to be of sufficient size to pay future benefits.

If the rate of return earned is too low, the fund may be unable to finance the benefits and the employer will be obligated to make up the difference. In the case of public sector plans, the burden of such under-funded pension liabilities would fall to the taxpayer.

BROADENING INVESTMENT POWERS

The amendments expand the range of eligible investment classes to include those authorized by the Pension Benefits Standards Act, 1985 (Canada). This federal act permits investment in a wide range of specified investments. These include government and corporate debt instruments, preferred and common shares, mortgages, real estate and resource properties, units of mutual and pooled funds, real estate investment trusts and loans secured by eligible investments.

The Pension Benefits Standards Act, 1985 (Canada) governs most pension plans which fall under federal authority. There are approximately 950 federal pension plans regulated by the act with combined assets of about $35 billion. The largest of these plans include those of the chartered banks, Air Canada, Canadian National Railway, Canadian Pacific and Bell Canada Enterprises. The act also applies to private pension plans in provinces without specific pension legislation, such as British Columbia.

The amendments also allow the Minister to utilize external expertise to assist in the investment management process.

PENSION FUND PARTICIPATION IN DIVERSIFICATION

The diversification strategy has been developed, and continues to be developed, in consultation with the trustees and the employee and employer representatives of the public sector pension plans. At this time some of the pension plans are ready to proceed with diversification while others require additional time to review the concept.

The amendments allow for the diversification strategy to be implemented individually for each plan. An order of the Lieutenant Governor in Council is required for each pension plan participating in the program. The order is to be made on the recommendation of the plan's trustee and it must specify the asset classes in which the plan may be invested.

FIDUCIARY DUTY

It must be emphasized that whatever investment powers the Minister may have or be given, no matter how broad or restrictive they may be, the Minister's primary and overriding duty is to exercise prudence in his management of all funds which are held in trust. For pension funds the financial interests of the beneficiaries is to be the prime motivation for all investment action.

WHY DIVERSIFY INVESTMENT PORTFOLIO?

Investment managers are charged with the task of buying securities that, when taken as a whole, will meet certain investment objectives. Objectives vary from one investment fund to another and may focus on such factors as income requirements, the expected investment time period, tax and legal restrictions. Two very important objectives are common to all investment funds:

MINIMIZE RISK AND MAXIMIZE RETURN

Investment diversification allows the investment manager to pursue both basic investment objectives.

RISK REDUCTION

Diversification is a risk reduction tool used by most of us in our daily lives. In many circumstances we maintain options and alternatives in order that one failure does not result in a major loss or disappointment; in other words, we spread the risk around. Diversification is extremely relevant to investment management.

All investments contain a degree of risk, even government guaranteed securities. Consider Government of Canada bonds; while they have no inherent risk of default, they are subject to interest rate risk and, as such, their market values can fluctuate widely. In the investment industry the riskiness of an asset is generally measured by the degree to which its value fluctuates from period to period.

Investment values fluctuate in response to changes in economic, business and financial factors. Different types of securities react differently to each change in the investment environment. For example, an increase in the rate of inflation will depress the value of government bonds but it will generally have a positive effect on the value of real estate.

By combining different types of securities that react differently to changes in the investment environment, the fluctuation in overall portfolio value can be decreased. When the fluctuation in value is reduced, risk is reduced. In this manner, diversification is used to control investment risk.

RETURN

The most attractive aspect of diversification is that, while it is being used to control risk, the portfolio's return can also be significantly improved.

Certain assets, such as international securities, have historically experienced returns which were both volatile and high. On their own, such securities would be considered too risky for conservative portfolios such as pension funds. However, the returns of international securities do not show a close relationship with the returns of domestic investments, making them an extremely attractive choice for diversification. By adding international securities to a domestic portfolio, overall risk can be reduced and the overall portfolio yield can be increased significantly over time.

The following chart illustrates the "risk/return" relationships of different types of investments. It also shows the relative "risk/return" profile of the investment strategy presently employed by British Columbia's public-sector pension funds versus a diversified Canadian public-sector pension fund. The graph is constructed using actual rate of return data for the past ten years.

Portfolio managers strive to construct portfolios that will plot in the upper left-hand corner of the graph, achieving high return and low risk.

We can see that over the past ten years diversified portfolios have realized greater returns and experienced less risk than non-diversified portfolios.

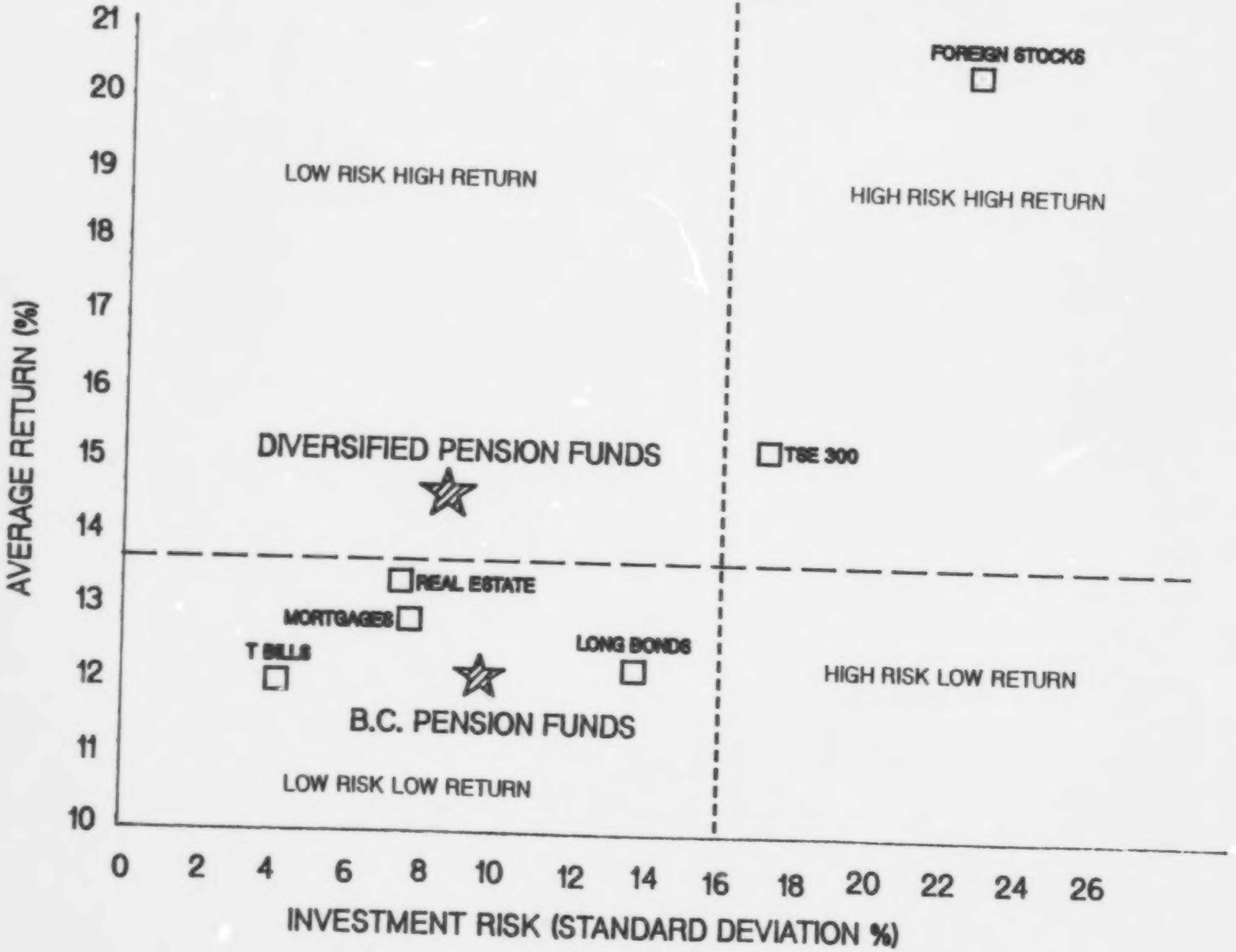
RETURNS OF DIFFERENT ASSET CLASSES

The following table outlines the ten year annualized compounded total rate of return for the more common asset classes:

Common Stock (TSE 300)	15.4%
Bonds (ScotiaMcleod Index)	12.5%
Foreign Stock (EAFE)	20.7%
Real Estate (ScotiaMcLeod Index)	13.7%
Cash (ScotiaMcLeod Index)	11.9%
Mortgages (ScotiaMcLeod Index)	13.1%

HISTORICAL RISK AND RETURN

BASE ON 1979 – 1988 DATA



Section 1(1):

(new)

The definition of "special account" is shortened to eliminate redundant wording. There is no change in substance.

Section 1(1):

(new)

"general fund" is defined to mean the general fund of the consolidated revenue fund.

Section 1(1):

(new)

"pooled investment portfolio" is defined to mean a pooled fund established and operated by the Minister.

Section 18(2):

(new)

Reference to the new investment sections are added to Section 18(2).

Section 36(1):

(New and re-enactment)

The Minister may invest the consolidated revenue fund in:

a) securities of Canada, a province or the United States;

b) bank securities to include U.S. dollar swapped deposits;

c) securities of the Municipal Finance Authority of B.C.;

d) high-grade commercial paper;

e) financial options and financial futures.

LC6/jb

MINISTER OF FINANCE AND
CORPORATE RELATIONS.

BILL X - 1989

FINANCIAL ADMINISTRATION AMENDMENT ACT, 1989

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1. Section 1 (1) of the *Financial Administration Act*, S.B.C. 1981, c. 15, is amended

(a) in the definition of "special account" by striking out "of the consolidated revenue fund", and

(b) by adding the following definitions:

"general fund" means the general fund, referred to in section 9 (2), of the consolidated revenue fund;

"pooled investment portfolio" means a portfolio of investments or loans, or both, established under section 36.1; .

2. Section 18 (2) is amended by adding "to 36.2" after "36".

3. Section 36 is repealed and the following substituted:

Investments

36. (1) Where money of the consolidated revenue fund is not immediately required for payments, it may, on terms and conditions the Minister of Finance considers advisable, be invested by the minister in

(a) securities that are obligations of or guaranteed by Canada, a province or the United States of America,

(re-enactment)

Section 36(2):
On the Minister's terms, trust funds may be invested in:

a) Section 36(1) investments
b) investments under Section 15 of the *Trustee Act*

(new)

Section 36(3):
With the Minister's consent, various funds may be placed with the Minister, as agent, for investment purposes.

Section 36(4):
Except for general fund monies, the Minister may invest certain monies in:

a) high-grade foreign government securities
b) investments authorized under Schedule III of the Pension Benefits Standards Regulations, 1985

(b) fixed deposits, notes, certificates and other short term paper of or guaranteed by a savings institution, including swapped deposit transactions in the currency of the United States of America,

(c) securities issued by the Municipal Finance Authority of British Columbia,

(d) commercial paper issued by a company incorporated under the laws of Canada or of a province, the securities of which are rated in the highest rating category by at least 2 recognized security rating institutions, and

(e) financial options and financial futures, including currency and fixed income instruments.

(2) Where money of a trust fund is not immediately required for payments, it may, on terms and conditions the Minister of Finance considers advisable, be invested by the person having authority to invest the money,

(a) in any investment permitted under subsection (1), or

(b) subject to subsection (7) and regulations of the Lieutenant Governor in Council, in any of the classes of investments permitted under section 15 of the *Trustee Act*.

(3) Notwithstanding any other enactment, a person having authority to invest money of a trust fund, special fund or other fund, other public money or money of a government body may, with the agreement of the Minister of Finance, place the money with the minister, as agent of the person, for investment.

(4) Subject to subsection (5) and excepting money of the general fund, where the Minister of Finance has the authority to invest the money of a trust fund, special fund or other fund, other public money or the money of a government body, the minister may invest or loan the money, or both,

Section 36(5):

(new)

Trust fund monies shall not be invested in Section 36(4) investments unless authorized by regulation.

Section 36(6):

(new)

Regulations may be enacted, upon the recommendation of a trust fund's trustees, to permit the investment of trust funds in Section 36(4) investments. The regulation must specify the classes of investments to be permitted. It also may contain restrictions on investment but only those restrictions which limit investment to Canadian investments and those which refer to quality conditions.

(a) in securities that

(i) are obligations of or are guaranteed by the government of a country, and

(ii) have a quality rating satisfactory to the Minister of Finance from a recognized security rating institution approved by the minister, and

(b) in any of the classes of investments or classes of loans permitted under Schedule III of the Pension Benefits Standards Regulations, 1985, SOR/87-19, made under the *Pension Benefits Standards Act, 1985* (Canada), as the schedule reads on the day this section comes into force, and for this purpose the restrictions, limits and conditions established by the schedule apply, except that references to the "Superintendent" in the schedule shall be read as references to a person designated by the Lieutenant Governor in Council in respect of the source of the money being invested or loaned.

(5) Money of a trust fund shall not be invested or loaned under subsection (4) unless the investment or loan, as the case may be, is within the classes of permitted investments and loans for that trust fund specified by regulation under subsection (6).

(6) The Lieutenant Governor in Council may, on recommendation by the trustees of a trust fund, by regulation, specify the classes of permitted investments or loans, or both, for the trust fund by

(a) specifying classes of investments or classes of loans, or both, referred to in subsection (4),

(b) restricting a class specified under paragraph (a) to Canadian investments or loans and, for this purpose, the regulation may define Canadian investments or loans, and

(new)	**Section 36(7):** Investment limits found in the Pension Benefits Standards Regulations, 1985 will apply to trust fund investments made by the Minister under Section 15 of the *Trustee Act* *if and only if* the Minister also has authority to invest in those classes of investments found in Section 36(4).
(new)	**Section 36(8):** The Minister may lend securities on a secured basis.
(re-enactment)	**Section 36(9)(a):** Investments are deemed to include loans secured by eligible investments.
(new)	**Section 36(9)(b):** Investments are deemed to include rights and interests in eligible investments.

(c) making a class specified under paragraph (a), whether or not restricted under paragraph (b), subject to conditions as to quality.

(7) Where money of a trust fund is permitted by regulation under subsection (6) to be invested or loaned, or both, under subsection (4), the Minister of Finance, in investing the money of the trust fund under the authority of subsection (2) (b), is subject to the limits established by the schedule referred to in subsection (4) (b).

(8) Subject to the regulations of the Lieutenant Governor in Council, where the Minister of Finance acquires securities through the exercise of an authority under sections 36 to 36.2 to invest the money of a trust fund, special fund or other fund, other public money or the money of a government body, the minister may loan the securities if the loan is secured by collateral security satisfactory to the minister.

(9) For the purposes of sections 36 to 36.2,

(a) where these sections or any other enactment gives the authority to make an investment,

(i) the authority shall be deemed to include the authority to make a loan if the loan is secured by anything in which the money could be invested under this section, and

(ii) provisions in this Act or any other enactment, as they apply to the investment, apply to a loan referred to in subparagraph (i), and

(b) where these sections or any other enactment gives the authority to make an investment or loan,

(i) the authority shall be deemed to include the authority to acquire a right or interest in the investment or loan, and

(new and re-enactment)	Section 36(10): Nothing in these amendments requires the sale of lawfully-made investments.
(new)	Section 36.1(1): The Minister is authorized to establish and operate pooled investment portfolios.
(re-enactment)	Section 36.1(2): Regulations concerning pooled investment portfolios may be made including one which gives the Minister such powers as are considered necessary or advisable and one to establish rules to determine each participant's stake in a pooled investment portfolio.
(re-enactment)	Section 36.1(3): Where the Minister has authority to invest money, he may invest in pooled investment portfolios.

(ii) provisions in this Act or any other enactment, as they apply to the investment or loan, apply to a right or interest referred to in subparagraph (i).

(10) Nothing in this section requires the disposition of investments or loans that were lawfully made.

Pooled investment portfolios

36.1 (1) Subject to the regulations, the Minister of Finance may establish and operate pooled investment portfolios in which the money from trust funds, special funds or other funds, other public money and the money of government bodies may be combined in common for the purpose of investment by means of investment units of participation in a pooled investment portfolio.

(2) The Lieutenant Governor in Council may make regulations respecting pooled investment portfolios, including regulations that

(a) empower the Minister of Finance to exercise, with respect to pooled investment portfolios, such powers as the Lieutenant Governor in Council considers necessary or advisable, including the power, subject to subsection (4), to require that money of a trust fund, special fund or other fund, other public money and money of a government body be placed with the minister for investment in one or more pooled investment portfolios, and

(b) establish systems or rules for regulating and determining what interest or share in a pooled investment portfolio is attributable to the general fund, to a trust fund, special fund or other fund, to other public money or to a government body.

(3) Subject to subsections (4) and (5), where the Minister of Finance has the authority to invest money, the minister may invest the money in a pooled investment portfolio.

Section 36.1(4):

(re-enactment) The Minister has limited power to require the investment of money from a government body into a pooled investment portfolio.

Section 36.1(5):

(re-enactment) A fund may only invest in a pooled investment portfolio which limits its holdings to those investments which are eligible for the fund.

Section 36.1(6):

(re-enactment) The five previous provisions regarding pooled investment portfolios apply in all cases.

Section 36.1(7):

(re-enactment) A pooled investment portfolio may invest in another pooled investment portfolio if only eligible investments are made by the other pooled investment portfolio.

Section 36.1(8):

(new) For the purpose of limit calculations, a fund's holdings of a certain investment class shall be its proportionate holding of that investment class when that investment class is invested in through a pooled investment portfolio.

(4) The Minister of Finance shall not invest or require the investment of the money of a government body in a pooled investment portfolio unless

(a) a power to invest money of the government body is conferred on the minister by or under another Act or another section of this Act,

(b) the minister is empowered to act as a trustee of or for a sinking fund in relation to the money, or

(c) the government body places the money with the minister with the request that it be invested in a pooled investment portfolio.

(5) Where money to be invested in a pooled investment portfolio is subject to a restriction or condition on investments or loans, or both, that is established by or under an enactment, the money shall only be invested in a pooled investment portfolio that is confined to the permitted investments or loans, or both.

(6) Subsections (1) to (5) apply notwithstanding any other enactment or any other section of this Act.

(7) Money in a pooled investment portfolio may be invested in another pooled investment portfolio if the other pooled investment portfolio is confined to permitted investments or loans, or both, for the money invested in the pooled investment portfolio making the investment in the other pooled investment portfolio.

(8) Notwithstanding any attribution rules established by regulation under subsection (2) (b), where money invested in a pooled investment portfolio is subject to a restriction, limit or condition on permitted investments or loans, or both, and that restriction, limit or condition requires calculation of the value of a specific class of investments or loans, or both, that amount in respect of the money invested in the pooled investment portfolio shall be calculated as the product of

(new)

Section 36.1(9):

The calculation of limits as mentioned immediately above will extend to pooled investment portfolios within pooled investment portfolios.

(re-enactment)

Section 36.2(1):

Regulations may be made to regulate investment and lending activities and to facilitate investment and lending if considered necessary or advisable.

(re-enactment)

Section 36.2(2):

Upon the Minister's recommendation, a committee may be appointed to advise him on investment matters.

(a) the percentage of the total investment units of participation in the pooled investment portfolio at the time of the calculation that are units held by the source of the money subject to the restriction, limit or condition, and

(b) the book value of the assets of the pooled investment portfolio that are within the specific class of investments or loans, or both.

(9) Where the money of a pooled investment portfolio is invested in another pooled investment portfolio, the product of

(a) the percentage of the total investment units of participation in the other pooled investment portfolio at the time of the calculation that are units held by the investing pooled investment portfolio, and

(b) the book value of the assets in the other pooled investment portfolio that are within the specific class of investments or loans, or both,

shall be included, for the purposes of subsection (8) (b), in the book value of the assets of the investing pooled investment portfolio making the investment in the other pooled investment portfolio.

Administration of investments

36.2 (1) The Lieutenant Governor in Council may make regulations considered necessary or advisable to

(a) facilitate the investment and lending of money from, and the lending of securities of, trust funds, special funds or other funds, other public money and money of government bodies, and

(b) regulate the investing and lending of money and the lending of securities under sections 36 to 36.2.

(2) The Lieutenant Governor in Council may, on the recommendation of the Minister of Finance, appoint a committee to advise the minister on policies

(re-enactment)	Section 36.2(3): Each year the Minister must table in the Legislative Assembly a report of the government's investment portfolio.
(re-enactment)	Section 36.2(4): The Minister may sell or exchange an investment.
(new)	Section 36.2(5)(a): The Minister may do all things necessary or advisable to make, exchange, continue or dispose of an investment to include buying and selling currency.
(new)	Section 36.2(5)(b)(i): The Minister may delegate his powers of investment.
(new)	Section 36.2(5)(b)(ii): The Minister may delegate his administrative powers over investments.
(new)	Section 36.2(5)(b)(iii): The Minister may delegate his custodianship powers if the securities are held in trust.

respecting the exercise of the powers under sections 36 to 36.2 and on other matters related to investments and loans.

(3) The Minister of Finance shall prepare a report of the investment portfolio of the government, including loans made under section 36 to 36.2, for each fiscal year to be laid before the Legislative Assembly at the same time as the public accounts.

(4) Where the Minister of Finance holds an investment or loan under sections 36 to 36.2, the minister may

(a) dispose of the investment or loan, and

(b) exchange the investment or loan for another investment or loan permitted for the source of the money.

(5) Where the Minister of Finance is authorized to make an investment or loan, or both, the minister may

(a) do all things necessary or advisable for the purpose of making, continuing, exchanging or disposing of the investment or loan, including buying and selling currency on a current or future delivery basis,

(b) authorize

(i) a person to exercise the minister's powers to make, continue, exchange or dispose of the investment or loan,

(ii) a person to administer the investment or loan, and

(iii) a person, or that person's nominee, to hold the investment or loan, in the case of money in a trust fund, in trust for the minister and the trustees and, in other cases, in trust for the minister,

subject to any restrictions, limits or conditions that the minister may impose, and

Section 36.2(5)(c):

(new)

The Minister may contract for investment, administrative and custodianship services.

Section 36.2(6):

(new)

When the Minister invests monies as agent for a person, the monies do not become trust monies solely because of this relationship.

Section 36.2(7):

(re-enactment)

Where certain monies are invested and the resulting earnings or proceeds are paid into the general fund, such monies may be transferred to the source of the monies.

Section 36.2(8):

(re-enactment)

A transfer, as contemplated in Section 36.2(7), shall not be construed as attributing any specific share of earnings or proceeds from a pooled investment portfolio to any participant of the pooled investment portfolio.

Section 36.2(9)(a):

(new and partial re-enactment)

Nothing in these amendments authorizes the Minister to invest or lend or to delegate his investment authority if such activity would run contrary to any express requirement or restriction of any given trust or bond or security issued by the government.

(c) enter into an agreement with a person under which the person provides one or more of the services referred to in paragraph (b).

(6) Where money, other than money of a trust fund, is placed with the Minister of Finance under the authority of section 36 (3), the money does not, solely by reason of the placement, become money of a trust fund.

(7) Where

(a) money from a trust fund, special fund or pooled investment portfolio is invested or loaned, and

(b) interest earnings or proceeds from an exchange or disposition in respect of the trust fund, special fund or pooled investment portfolio are paid into the general fund,

the interest earnings or proceeds may, subject to any other Act, be transferred to the appropriate trust fund, special fund or pooled investment portfolio.

(8) Where an investment or loan is made in a pooled investment portfolio, nothing in subsection (7) shall be construed as attributing any specific share of interest earnings or proceeds from the investment or loan, as the case may be, to the general fund, to a government body or to a specific trust fund, special fund or other fund.

(9) The Minister of Finance shall not, under sections 36 to 36.2,

(a) invest or loan money, loan securities or delegate the minister's authority respecting investments or loans contrary to

(i) any express requirement or restriction of a trust to which that money is subject, and

(ii) any requirement or restriction existing with respect to that money by reason of any provision of a bond or other security issued by the government, or by reason of any other term or condition of a loan to the government, and

(new)

Section 36.2(9)(b):
The only loans that the Minister is authorized to make under the investment sections of this Act are for the purpose of providing a financial benefit to the source of the money.

(new)

Section 36.2(10):
Trust monies must be invested in the best interests of the trust fund.

(new)

Section 36.2(11)(a):
No investment in a company by the Minister, of itself, will invalidate a government decision involving that company.

(new)

Section 36.2(11)(b):
No person acting on behalf of the government, except the government's investment managers, shall take into consideration the fact that the government holds any particular investment.

CONSEQUENTIAL AMENDMENTS

(new and partial re-enactment)

Pension (College) Act, Section 27(2) and (2.1):
The trustees may invest under Section 36(2) of the Financial Administration Act (subject to the Minister of Finance's prior approval) or place trust monies with the Minister of Finance for investment.

(b) make a loan that is not a loan for the purpose of providing a financial benefit to the source of the money for the loan.

(10) A person who has the authority to invest or loan the money of a trust fund shall invest or loan the money in the best interests of the trust fund.

(11) Where an investment or loan is made by the Minister of Finance or by a person authorized under subsection (5) (b), the interest of the minister in the investment or loan, as the case may be,

(a) shall not, of itself, invalidate any decision, order or other action of a public officer or other person acting on behalf of the government that relates directly or indirectly to the investment or loan, and

(b) shall not be taken into consideration by a public officer or other person acting on behalf of the government except in relation to investments or loans made under the authority of sections 36 to 36.2.

Consequential Amendments

Pension (College) Act

4. Section 27 (2) of the *Pension (College) Act*, R.S.B.C. 1979, c. 316, is repealed and the following substituted:

(2) The trustees shall cause all money available for investment made over to them or to their account by the commissioner to be invested in accordance with subsection (2.1).

(2.1) The trustees may

(a) subject to the prior approval in writing of the Minister of Finance,

(i) invest the money in investments permitted for a trust fund under section 36 (2) of the *Financial Administration Act*,

(ii) exchange an investment made under subparagraph (i) for another investment permitted under that subparagraph, and

Pension (Teachers) Act, Section 26:

(new and partial re-enactment)

The trustees may invest under Section 36(2) of the Financial Administration Act (subject to the Minister of Finance's prior approval) or place trust monies with the Minister of Finance for investment.

Workers Compensation Act, Section 67(2):

(new and re-enactment)

The board may further invest its accident and silicosis funds under Section 36(4) of the Financial Administration Act (subject to the supervision and direction of the Minister of Finance).

(iii) realize an investment held under this paragraph, or

(b) place the money with the Minister of Finance under section 36 (3) of the *Financial Administration Act* for investment.

Pension (Teachers) Act

6. Section 26 of the *Pension (Teachers) Act*, R.S.B.C. 1979, c. 320, is repealed and the following substituted:

Investment by trustees

26. (1) The trustees shall cause all money available for investment to be invested in accordance with subsection (2).

(2) The trustees may

(a) subject to the prior approval in writing of the Minister of Finance,

(i) invest the money in investments permitted for a trust fund under section 36 (2) of the *Financial Administration Act*,

(ii) exchange an investment made under subparagraph (i) for another investment permitted under that subparagraph, and

(iii) realize an investment held under this paragraph, or

(b) place the money with the Minister of Finance under section 36 (3) of the *Financial Administration Act* for investment.

Workers Compensation Act

7. Section 67 (2) of the *Workers Compensation Act*, R.S.B.C. 1979, c. 437, is amended by adding "and (4)" after "section 36 (2)".

LC6/jb

FINANCIAL ADMINISTRATION AMENDMENT ACT, 1989

Explanatory Notes

SECTIONS 1 and 2: Consequential to the new sections 36 to 36.2.

SECTION 3: repeals the existing section 36 of the Act and replaces it with 3 new sections that continue the existing powers of section 36 and add further powers for the purposes of allowing diversified investments of money held by the government.

SECTIONS 4 to 7: Consequential to sections 36 to 36.2 of the Act.

SCHEDULE III

PERMITTED INVESTMENTS

1. The funds of a plan or any portion of the funds may be invested in

(*a*) the bonds, debentures, stocks or other evidences of indebtedness of or guaranteed by

(i) the Government of Canada or the government of a province, or

(ii) the government of any country in which the employer is carrying on business if the total investment under this subparagraph does not exceed five per cent of the book value of the total assets of the plan;

(*b*) the bonds, debentures or other evidences of indebtedness of or guaranteed by a municipal corporation in Canada, or of a school corporation in Canada, or secured by rates or taxes levied under the authority of a province on property situated in that province, or the bonds, debentures or other evidences of indebtedness of a fabrique that are fully secured by a mortgage, charge or hypothec on real estate or by the rates or taxes levied under the authority of a province;

(*c*) the bonds or debentures of a corporation that are secured by the assignment to a trust corporation in Canada of an annual payment that the Government of Canada has agreed to make, where the annual payment is sufficient to meet

(i) the interest falling due on the bonds or debentures that are outstanding, and

(ii) the principal amount of the bonds or debentures that are maturing for payment in the year in which the annual payment is made;

(*d*) the bonds or debentures issued by a charitable, educational or philanthropic corporation that are secured by the payment, assignment or transfer to a trust corporation in Canada of subsidies, payable by or under the authority of a province, sufficient to meet the interest as it falls due on the bonds or debentures and the principal amount of the bonds or debentures on maturity;

(*e*) the bonds, debentures or other evidences of indebtedness of a corporation that are fully secured by statutory charge on real estate or on the plant or equipment of the corporation used in the transaction of its business if, for a period of at least 10 years immediately preceding the date of investment in those bonds, debentures or other evidences of indebtedness, interest in full has been paid regularly on the securities of the corporation of that class then outstanding;

(*f*) the bonds, debentures or other evidences of indebtedness issued by an authority or other body without share capital established and empowered pursuant to a statute of Canada or of any province to administer, regulate the administration of, provide or operate port, harbour, airport, bridge, highway, tunnel, transportation, communication, sanitation, water, electricity or gas services or facilities and, for any of these purposes, to levy, impose or establish taxes, rates, fees or other charges that may be used only in carrying out the objects of the authority or other body and are sufficient to meet its operating, maintenance and debt service charges;

(*g*) the bonds, debentures and other securities issued or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development approved by subsection 2(1) of the *Bretton Woods and Related Agreements Act*;

(*h*) the bonds, debentures and other securities issued or guaranteed by the Inter-American Development Bank or by the Asian Development Bank;

(*i*) the debentures or other evidences of indebtedness of

(i) a loan company designated as a mortgage investment company pursuant to section 101 of the *Loan Companies Act*, or

(ii) a corporation that is incorporated by or pursuant to the laws of a province for the purpose of carrying on the business of a loan company within the meaning of the *Loan Companies Act* and that has powers and is subject to limitations and requirements that are the same in all essential respects as the powers conferred on and the limitations and requirements made applicable to a mortgage investment company by that Act;

(*j*) the bonds, debentures or other evidences of indebtedness of a corporation that are fully secured by a mortgage, charge or hypothec to a trustee or to the plan on any of the following assets or any combination thereof:

(i) real estate or leaseholds,

(ii) the plant or equipment of a corporation or partnership that is used in the transaction of the business of that corporation or partnership, or

(iii) bonds, debentures or other evidences of indebtedness, or shares, of a class authorized by this section as investments, or cash balances, if those bonds, debentures or other evidences of indebtedness, shares or cash balances are held by a trustee, and, for the purpose of this paragraph, the inclusion, as additional security under the mortgage, charge or hypothec, of any other assets not of a class authorized by this schedule as investments shall not render such bonds, debentures or other evidences of indebtedness ineligible as an investment;

(*k*) the bonds, debentures or other evidences of indebtedness that are insured by a policy of credit insurance issued by an insurance company registered under the *Canadian and British Insurance Companies Act*;

(*l*) obligations or certificates issued by a trustee to finance the purchase of transportation equipment for a corporation incorporated in Canada or the United States, to be used on railways or public highways, if the obligations or certificates are fully secured by

(i) an assignment of the transportation equipment to, or the ownership thereof by, the trustee, and

(ii) a lease or conditional sale thereof by the trustee to the corporation;

(*m*) the bonds, debentures or other evidences of indebtedness of a corporation if, at the date of investment, the preferred shares or the common shares of the corporation are authorized as investments by paragraph (*r*) or (*s*) and the aggregate of

(i) the amount of the total indebtedness of the corporation on the date of the investment, and

(ii) where the investment is to be made in a new issue of bonds, debentures or other evidences of indebtedness of the corporation, the amount of additional indebtedness to be incurred by the corporation as a result of that issue

does not exceed three times the aggregate of the average amounts of paid-in capital, contributed surplus, retained earnings and total indebtedness of the corporation, each such average amount being calculated as one fifth of the aggregate of the relevant amounts determined as of the end of each of the five financial years of the corporation immediately preceding the date of investment and, for the purposes of this paragraph,

(iii) where the corporation at the date of a proposed investment owns beneficially, directly or indirectly, more than 50 per cent of the common shares of one or more other corporations and the accounts of the corporation and those other corporations are normally presented to the shareholders of the corporation in consolidated form, the amount of paid-in capital, contributed surplus, retained earnings and total indebtedness at any relevant time may be determined on the basis of a consolidation of the accounts of the corporation and those other corporations, and

(iv) where the corporation is a corporation continuing or formed as a result of the amalgamation or merger of two or more corporations, the amount of paid-in capital, contributed surplus, retained earnings and total indebtedness at any relevant time prior to the amalgamation or merger shall be deemed to be identical to the corresponding amounts determined on the basis of a consolidation of the accounts of the amalgamated or merged corporations;

(*n*) the bonds, debentures or other evidences of indebtedness

(i) of or guaranteed by a corporation, where the earnings of the corporation, in a period of five years that ended less than one year before the date of investment, have been equal to at least 10 times and in each of any four of the five years have been equal to at least one and one-half times the annual interest requirements at the date of investment on the total indebtedness of or guaranteed by the corporation and,

(A) where the investment is to be made in a new issue of bonds, debentures or other evidences of indebtedness of the corporation, the additional annual interest requirements that will result from that issue shall be taken into account in determining the annual interest requirements at the date of investment on the total indebtedness of or guaranteed by the corporation,

(B) where the corporation at the date of investment owns, directly or indirectly, more than 50 per cent of the common shares of another corporation, the earnings of the corporations during the period of five years may be consolidated with due allowance for any minority interest, and in that event the interest requirements of the corporations shall be consolidated and such consolidated earnings and consolidated interest requirements shall be taken as the earnings and interest requirements of the corporation,

(C) where the corporation is a corporation continuing or formed as a result of the amalgamation or merger of two or more corporations, it is deemed to have had earnings and annual interest requirements for any relevant period prior to the date of the amalgamation or merger that are identical to the earnings and annual interest requirements of the amalgamated or merged corporations determined on the basis of a consolidation of their accounts, and

(D) "earnings" means earnings available to meet interest charges on indebtness, or

(ii) guaranteed by a corporation, where the corporation meets the requirement set out in subparagraph (*s*)(ii) and where those bonds, debentures or other evidences of indebtedness would be eligible as an investment for a plan under paragraph (*l*) if they were issued by the guaranteeing corporation;

(*o*) a contract, issued by a person authorized to carry on a life insurance business in Canada and containing a guaranteed minimum rate of return on the contract;

(*p*) a contract issued by a person authorized to carry on a life insurance business in Canada in respect of which separate and distinct funds are maintained by the person provided that the funds are invested in accordance with this schedule;

(*q*) guaranteed investment certificates issued by a trust company incorporated in Canada if, at the date of investment, the preferred shares or the common shares of the trust company are authorized as investments under paragraph (*r*) or (*s*);

(*r*) the preferred shares of a corporation if

(i) the corporation has paid a dividend in each of the five years immediately preceding the date of investment at least equal to the specified annual rate on all of its preferred shares, or

(ii) the common shares of the corporation are, at the date of investment, authorized as investments by paragraph (*s*);

(*s*) the fully paid common shares of a corporation where, during a period of five years that ended less than one year before the date of investment, the corporation

(i) paid in each of at least four of the five years, including the last year of the period, a dividend on its common shares, or

(ii) earned in each of at least four of the five years, including the last year of the period, an amount available for the payment of a dividend on its common shares

of at least four per cent of the average value at which the issued common shares of the corporation were carried in the capital stock account of the corporation during the year in which the dividend was paid or in which the amount was earned, as the case may be, but

(iii) except as provided in section 6 of this schedule, not more than 30 per cent of the common shares of any corporation shall be purchased by or on behalf of a plan,

(iv) if, at the date of a proposed investment, the corporation owns beneficially, directly or indirectly, more than 50 per cent of the common shares of one or more other corporations, and if the accounts of the corporation and those other corporations are normally presented to the shareholders of the corporation in consolidated form, an investment shall not be made under this paragraph unless the requirement in subsection (i) or (ii) is met on the basis of the consolidated accounts of the corporation and those other corporations, and

(v) where the proposed investment is in the shares of a corporation continuing or formed as a result of the amalgamation or merger of two or more corporations, that corporation is deemed, for the purposes of this paragraph, to have dividend and earnings records for any relevant period prior to the date of the amalgamation or merger identical to the dividend and earnings records of the amalgamated or merged corporations determined on the basis of a consolidation of their accounts;

(*t*) the shares of the capital stock of

(i) a loan company designated as a mortgage investment company pursuant to section 101 of the *Loan Companies Act*, or

(ii) a corporation that is incorporated by or pursuant to the laws of a province for the purposes of carrying on the business of a loan company within the meaning of the *Loan Companies Act* and that has powers and is subject to limitations and requirements that are the same in all essential respects as the powers conferred on and the limitations and requirements made applicable to a mortgage investment company by the *Loan Companies Act*,

but not more than 30 per cent of the common shares issued by that loan company or corporation shall be purchased by or on behalf of a plan;

(*u*) ground rents, mortgages or hypothecs on real estate or leaseholds in Canada, but the amount paid for the mortgage or hypothec, together with the amount of indebtedness under any mortgage or hypothec on the real estate or leasehold ranking equally with or superior to the mortgage or hypothec in which the investment is made, shall not exceed three quarters of the value of the real estate or leasehold covered thereby;

(*v*) mortgages or hypothecs on real estate or leaseholds in Canada or bonds or notes secured by such mortgages or hypothecs, notwithstanding that the mortgage or hypothec exceeds the amount that may otherwise be invested by or on behalf of the plan, if the excess is guaranteed or insured by, or through an agency of, the Government of Canada or the government of a province, or is insured by a policy of mortgage insurance issued by an insurance company registered under the *Canadian and British Insurance Companies Act* or the *Foreign Insurance Companies Act*;

(*w*) real estate or leaseholds for the production of income in Canada, either alone or jointly with any corporation or jointly with any person administering a trust governed by a registered pension fund or plan or a deferred profit sharing plan, as defined in the *Income Tax Act* if

(i) a lease of the real estate or leasehold is made to or guaranteed by

(A) the Government of Canada or the government of a province or by a municipality of Canada or an agency of that government or municipality, or

(B) a corporation, the preferred shares or common shares of which are, at the date of investment, authorized as investments by paragraph (*r*) or (*s*), and

(ii) the lease provides for a net revenue sufficient to yield a reasonable interest return during the period of the lease and to repay at least 85 per cent of the amount invested in the real estate or leasehold within the period of the lease but not exceeding 30 years from the date of investment,

and the real estate or leasehold may be held, maintained, improved, leased, sold or otherwise dealt with or disposed of by or on behalf of the plan;

(*x*) real estate or leaseholds for the production of income in Canada, other than real estate that yields petroleum or natural gas and leaseholds on such real estate, either alone or jointly with any corporation or jointly with any person administering a trust governed by a registered pension fund or plan or a deferred profit sharing plan, as defined in the *Income Tax Act*, if the real estate or leasehold has produced, in each of the three years immediately preceding the date of investment, net revenue in an amount that, if continued in future years, would be sufficient to yield a reasonable interest return on the amount invested in the real estate or leasehold and to repay at least 85 per cent of that amount within the remaining economic lifetime of the improvements to the real estate or leasehold but not exceeding 40 years from the date of investment, and the real estate or leasehold may be held, maintained, improved, leased, sold or otherwise dealt with or disposed of by or on behalf of the plan; or

(*y*) Canadian resource property if

(i) the property has yielded, in the aggregate, in each of the three years immediately preceding the date of investment, sufficient quantities of petroleum or natural gas to produce net revenue in an amount that, if continued in future years, would be sufficient to yield a reasonable interest return on the amount invested and to repay at least 75 per cent of that amount within the remaining economic lifetime of the property but not exceeding 15 years from the date of the investment, and

(ii) a report has been obtained from a person, licensed under provincial legislation relating to professional engineers, geologists or geophysicists, who is experienced in the appraisal of Canadian resource property and who is not the vendor or an agent or an employee of the vendor, to the effect that

(A) the estimated petroleum-producing or natural gas-producing capability of the Canadian resource property is such that it is expected to produce sufficient quantities of petroleum or natural gas to produce net revenue in an amount sufficient to yield a reasonable interest return on the amount invested and to repay at least 75 per cent of that amount within the remaining economic lifetime of the Canadian resource property but not exceeding 15 years from the date of the investment, and

(B) where the acquisition price of the Canadian resource property has not been determined by arm's length negotiations, that price is no greater than the fair value of the Canadian resource property at the time of its acquisition,

and the Canadian resource property may be held, explored, developed, maintained, improved, leased, sold or otherwise dealt with or disposed of by or on behalf of the plan.

2. (1) The total amount of funds invested by or on behalf of a plan under each of paragraphs 1(*w*) to (*y*) of this schedule in any one parcel of real estate, leasehold or Canadian resource property shall not at any time exceed four per cent of the book value of the total assets of the plan.

(2) The total amount of funds invested by or on behalf of a plan in Canadian resource property under

(*a*) paragraph (1)(*y*) of this schedule,

(*b*) section 5 of this schedule, and

(*c*) section 7 of this schedule, in shares of one or more resource corporations

shall not at any time exceed 15 per cent of the book value of the total assets of the plan.

3. The funds of a plan or any portion of those funds may be loaned on the security of

(*a*) any of the bonds, debentures or other evidences of indebtedness, shares or other securities in which the funds of a plan may be invested under section 1 of this Schedule, but the amount of the loan together with the amount invested therein, if any, shall not exceed in the aggregate the amount that may be invested therein under the provisions of this Schedule;

(*b*) real estate or leaseholds for a term of years or any other estate or interest in real estate in Canada, or Canadian resource property or any interest therein, but the amount of the loan together with the amount of indebtedness under any mortgage or hypothec on the real estate or interest therein or under any loan for which the Canadian resource property or any interest therein is pledged as security ranking equally with or superior to the loan shall not exceed three quarters of the value of the real estate or Canadian resource property or interest therein, subject to the exception that a mortgage or hypothec for more than three quarters of the sale price of the real estate or any pledge as security in the Canadian resource property for more than three quarters of the sale price of the Canadian resource property may be accepted as partial payment for the real estate or the Canadian resource property, as the case may be, sold by or on behalf of a plan; or

(*c*) real estate or leaseholds in Canada or Canadian resource property, notwithstanding that the loan exceeds the amount that may otherwise be loaned by or on behalf of the plan, if the excess is guaranteed or insured by or through an agency of the Government of Canada or the government of a province, or is insured by a policy of mortgage insurance issued by an insurance company registered under the *Canadian and British Insurance Companies Act* or the *Foreign Insurance Companies Act*.

4. Where the assets of a plan include securities of a corporation that, as a result of a *bona fide* arrangement for the reorganization or liquidation of the corporation or for the amalgamation of the corporation with another corporation, are to be exchanged for bonds, debentures or other evidences of indebtedness or shares not authorized as investments by sections 1 to 3, those bonds, debentures or other evidences of indebtedness or shares may be accepted by or on behalf of the plan.

5. The funds of a plan may be used for investments or loans not otherwise authorized by this schedule, including investments in real estate, leaseholds or Canadian resource property, subject to the following provisions:

(*a*) an investment in real estate, leaseholds or Canadian resource property pursuant to this section shall be made only in Canada, either alone or jointly with any corporation or jointly with any person administering a trust governed by a registered pension fund or plan or a deferred profit sharing plan, as defined in the *Income Tax Act*, and such real estate, leaseholds or Canadian resource property may be held, maintained, improved, developed, repaired, leased, sold or otherwise dealt with or disposed of by or on behalf of the plan, but the total investment pursuant to this section in any one parcel of real estate, leasehold or Canadian resource property shall not exceed two per cent of the book value of the total assets of the plan;

(*b*) this section does not affect the restrictions imposed by sections 1 to 3 of this Schedule on investments in mortgages or hypothecs or on loans on the security of real estate, leaseholds or Canadian resource property or against the purchase by or on behalf of a plan of more than 30 per cent of the common shares issued by a corporation, other than shares issued by a corporation referred to in paragraph 149(1)(*o*.3) of the *Income Tax Act* and acquired by or on behalf of the plan after October 31, 1985; and

(*c*) the total book value of the investments and loans made under this section and held by or on behalf of the plan, excluding those that are or at any time since their acquisition have been authorized as investments apart from this section, shall not exceed

(i) in the case of investments in real estate, leaseholds or Canadian resource property other than for the production of income, two per cent of the book value of the total assets of the plan,

(ii) in the case of investments in real estate, leaseholds or Canadian resource property including real estate or leaseholds other than for the production of income, seven per cent of the book value of the total assets of the plan, and

(iii) in the case of loans and investments other than investments in real estate, leaseholds or Canadian resource property, seven per cent of the book value of the total assets of the plan.

6. (1) In this section, "real estate corporation" means a corporation incorporated to acquire, hold, maintain, improve, lease or manage real estate or leaseholds, other than real estate that yields petroleum or natural gas or leaseholds in such real estate. (*société immobilière*)

(2) Notwithstanding anything in this schedule, the funds of a plan may be invested in the fully paid common shares of a real estate corporation, subject to the following terms and conditions:

(*a*) before an investment is made in the shares of a real estate corporation, the administrator shall file with the Superintendent a certified copy of the instrument of incorporation, by-laws and most recent financial statements of that corporation;

(*b*) the administrator shall deposit with the Superintendent within 14 days after an investment is made by or on behalf of the plan in the shares of a real estate corporation, an undertaking by that corporation that, while an investment in its shares is held by or on behalf of the plan, pursuant to this section, the corporation will

(i) file with the Superintendent

(A) copies of its annual financial statements,

(B) a list clearly identifying each of its assets,

(C) the names of its officers, directors and shareholders,

(D) on an annual basis, a certificate stating that the corporation is complying with its undertaking, and

(E) any changes made to the information filed under clauses (A) to (C),

(ii) permit the Superintendent or an authorized member of the Superintendent's staff to visit its head office at any time and examine its books and records,

(iii) limit its activities to acquiring, holding, maintaining, improving, leasing or managing real estate or leaseholds,

(iv) not carry on the activities referred to in subparagraph (iii) in respect of any real estate or leaseholds other than real estate or leaseholds held by or on behalf of or mortgaged to

(A) the plan,

(B) the real estate corporation,

(C) any other real estate corporation in which an investment has been made by or on behalf of the plan pursuant to this section, or

(D) any other real estate corporation of which more than 30 per cent of the common shares are owned by the corporation or by a real estate corporation referred to in clause (C),

(v) procure, at the request of the Superintendent and at its own expense, an appraisal by one or more competent valuators of any parcel of real estate or any leasehold owned by it,

(vi) not lend any of its funds to the person or persons referred to in section 14 of this schedule,

(vii) restrict its investments and loans, other than

(A) investments in real estate or leaseholds, and

(B) investments in the shares of other real estate corporations,

to those authorized for the funds of a plan under this schedule, and

(viii) not make or hold an investment in more than 30 per cent of the common shares of any other real estate corporation unless the administrator deposits with the Superintendent an undertaking by that other real estate corporation to the same effect as the undertaking referred to in this paragraph, except that the other real estate corporation shall further undertake not to make or hold an investment in the shares of any other real estate corporation;

(*c*) the common shares of the real estate corporation held by or on behalf of the plan shall be taken into account in the balance sheet of the plan at a value not greater than the amount obtained by multiplying

(i) an amount equal to the excess of the assets of the corporation over the sum of its liabilities and its preferred capital stock

by

(ii) the proportion that the number of common shares of the corporation held by or on behalf of the plan bears to the total number of the issued and outstanding common shares of the corporation;

(*d*) in respect of any one parcel of real estate or any one leasehold owned by the real estate corporation or by any other real estate corporation of which more than 30 per cent of the common shares are owned by the corporation, the aggregate of the book values of

(i) the investments held by or on behalf of the plan in mortgages or hypothecs, bonds, debentures or other evidences of indebtedness specifically secured by that parcel of real estate or leasehold,

(ii) the loans by or on behalf of the plan specifically secured by that parcel of real estate or leasehold, and

(iii) all other investments or loans that may reasonably be taken to represent an interest of the plan in that parcel of real estate or leasehold

shall not at any time exceed four per cent of the book value of the total assets of the plan;

(*e*) where an investment has been made by or on behalf of a plan in the shares of a real estate corporation pursuant to this section, the aggregate of the book values of investments made by or on behalf of the plan in the mortgages or hypothecs, bonds, debentures or other evidences of indebtedness or shares of, or by way of loans to,

(i) real estate corporations in the shares of which an investment has been made by or on behalf of the plan pursuant to this section, and

(ii) other real estate corporations of which more than 30 per cent of the common shares are owned by a real estate corporation referred to in subparagraph (i)

shall not at any time exceed 10 per cent of the book value of the total assets of the plan.

(3) For the purpose of paragraph (2)(*c*),

(*a*) the assets of the real estate corporation shall not include any asset, other than an investment referred to in clauses (2)(*b*)(vii)(A) and (B), that is not authorized as an investment under this schedule; and

(*b*) the total value of any securities included in the assets of the real estate corporation shall not exceed the total of their market values.

7. (1) In this section, "resource corporation" means a corporation that has, at all times since the date on which it was incorporated,

(*a*) limited its activities to acquiring, holding, exploring, developing, maintaining, improving, managing, operating or disposing of Canadian resource properties;

(*b*) made no investments other than in Canadian resource properties, property to be used in connection with Canadian resource properties owned by it, loans secured by Canadian resource properties to persons resident in Canada for the exploration or development of such properties or investments that a pension fund or plan is permitted to make under the Act; and

(*c*) borrowed money solely for the purpose of earning income from Canadian resource properties. (*société minière*)

(2) Notwithstanding anything in this schedule, the funds of a plan may be invested in the fully paid common shares of a resource corporation, subject to the following terms and conditions:

(*a*) before an investment is made in the shares of a resource corporation, the administrator shall file with the Superintendent a certified copy of the instrument of incorporation, by-laws and most recent financial statements of that corporation;

(*b*) the administrator shall deposit with the Superintendent within 14 days after an investment is made by or on behalf of the plan in the shares of a resource corporation, an undertaking by that corporation that, while an investment in its shares is held by or on behalf of a plan pursuant to this section, the corporation will

(i) file with the Superintendent

(A) copies of its annual financial statements,

(B) a list clearly identifying its assets,

(C) the names of its officers, directors and shareholders, and

(D) on an annual basis, a certificate stating that the corporation is complying with its undertaking, and

(E) any changes made to the information filed under clauses (A) to (C),

(ii) permit the Superintendent or an authorized member of the Superintendent's staff to visit its head office at any time and examine its books and records,

(iii) limit its activities to acquiring, holding, exploring, developing, maintaining, improving, managing, operating or disposing of Canadian resource property,

(iv) not carry on the activities referred to in subparagraph (iii) in respect of any Canadian resource property, other than Canadian resource property held by or on behalf of

(A) the plan,

(B) the resource corporation,

(C) any other resource corporation in which a substantial investment has been made by or on behalf of the plan pursuant to this section, or

(D) any other resource corporation of which more than 30 per cent of the common shares are owned by the resource corporation or by a resource corporation referred to in clause (C),

(v) procure, at the request of the Superintendent and at its own expense, an appraisal by one or more competent valuators of any resource property held by it,

(vi) not lend any of its funds to the person or persons referred to in section 14 of this schedule,

(vii) restrict its investments and loans, other than

(A) investments in Canadian resource property, and

(B) investments in the shares of other resource corporations,

to those authorized for the funds of a plan under this schedule, and

(viii) not make or hold an investment in more than 30 per cent of the common shares of any other resource corporation unless the administrator deposits with the Superintendent an undertaking by the other resource corporation to the same effect as the undertaking referred to in this paragraph, except that the other resource corporation shall further undertake not to make or hold an investment in the shares of any other resource corporation;

(*c*) the common shares of the resource corporation held by or on behalf of a plan shall be taken into account in the balance sheet of the plan at a value not greater than the amount obtained by multiplying

(i) an amount equal to the excess of the assets of the resource corporation over the sum of its liabilities and its preferred capital stock

by

(ii) the proportion that the number of common shares of the resource corporation held by or on behalf of the plan is of the total number of the issued and outstanding common shares of the resource corporation;

(*d*) in respect of any Canadian resource property owned by the resource corporation or by any other resource corporation of which more than 30 per cent of the common shares are owned by the corporation, the aggregate of the book values of

(i) the investments held by or on behalf of the plan in mortgages or hypothecs, bonds, debentures or other evidences of indebtedness specifically secured by that Canadian resource property,

(ii) the loans by or on behalf of the pension plan specifically secured by that Canadian resource property, and

(iii) all other investments or loans that may reasonably be taken to represent an interest of the plan in that Canadian resource property

shall not at any time exceed two per cent of the book value of the total assets of the plan, except that, where the Canadian resource property satisfies the conditions set out in subparagraphs 1(*y*)(i) and (ii) of this schedule, the aggregate of the book values of the loans or investments referred to in subparagraphs (i) to (iii) may be an amount equal to an amount not exceeding four per cent;

(*e*) where an investment is made by or on behalf of a plan in the shares of a resource corporation pursuant to this section, the aggregate of the book values of investments made by or on behalf of the plan in the mortgages or hypothecs, bonds, debentures or other evidences of indebtedness or shares of, or by way of loans to,

(i) resource corporations in the shares of which an investment has been made by or on behalf of the plan pursuant to this section, and

(ii) other resource corporations of which more than 30 per cent of the common shares are owned by a resource corporation referred to in subparagraph (i),

shall not, subject to subsection 2(2) of this schedule, exceed 10 per cent of the book value of the total assets of the plan.

(3) For the purposes of paragraph (2)(*c*),

(*a*) the assets of the resource corporation shall not include any asset, other than an investment referred to in clauses (2)(*b*)(vii)(A) and (B), that is not authorized as an investment under this schedule, and (*b*) the total value of any securities included in the assets of the resource corporation shall not exceed the total of their market values.

8. Notwithstanding sections 1 to 7 of this schedule, the funds of a plan may be used for loans made or guaranteed under the *National Housing Act*.

9. The funds of a plan shall not be invested in bonds, debentures or other evidences of indebtedness on which payment of principal or interest is in default.

10. (1) The funds of a plan shall not be invested in the assets or loaned on the securities of a corporation, partnership, association or person if, as a result of that investment or loan, more than 10 per cent of the book value of the total assets of the plan would be invested in or loaned on the securities of that corporation, partnership, association or person.

(2) For the purposes of this section, "securities" include bonds, debentures or other evidences of indebtedness, shares, mortgages or hypothecs on or investments in real estate, plants or equipment occupied or used by the corporation, partnership, association or person.

11. In addition to the investments and loans authorized by sections 1 to 8 of this schedule and notwithstanding the limitation set out in section 10 of this schedule, the funds of a plan may be invested in

(*a*) a mutual, pooled or segregated fund, other than a mutual or pooled fund that is a real estate investment trust as defined in subsection 12(1) of this schedule, or

(*b*) shares of a corporation that

(i) does not issue debt obligations, and

(ii) holds at least 98 per cent of its assets in cash, investments and loans, and obtains at least 98 per cent of its income from those investments and loans,

if the investments and loans that may be made by or on behalf of the mutual, pooled or segregated fund or by the corporation are subject in every respect to the limitations and restrictions set out in this section and sections 1, 2, 3, 5, 6, 7, 9, 10 and 14 of this schedule.

12. (1) In this section,

"real estate investment trust" or "trust" means a mutual or pooled fund the principal object of which is to provide investors with a means of investing directly in a portfolio of income-producing real estate or leaseholds, either alone or jointly with any corporation or jointly with any person administering a trust governed by a registered pension plan or fund or a deferred profit sharing plan as defined in the *Income Tax Act*; (*fonds mutuel pour les placements en biens immobiliers* or *fonds mutuel*)

"trustees of the trust" means the trustees of a real estate investment trust. (*fiduciaires du fonds*)

(2) Notwithstanding anything in this Schedule, the funds of a plan may be invested in the units of a real estate investment trust if

(*a*) the administrator of the plan or the trustees of the trust have filed with the Superintendent

(i) a copy of the declaration of trust creating the real estate investment trust and of all amendments thereto, and

(ii) a copy of a prospectus or similar document relating to the distribution of the units of the trust that has been filed pursuant to the laws of any jurisdiction in which the units will be distributed; and

(*b*) if at the time the investment is made

(i) the investments that may be made by the trust, other than investments in real estate or leaseholds, are restricted in every respect to those investments authorized for the funds of the plan,

(ii) the total of the amounts invested in or loaned on the security of any parcel of real estate or any one leasehold does not exceed 10 per cent of the book value of the net assets of the trust,

(iii) the total indebtedness of the trust in respect of borrowed money, the repayment of which is not secured by real estate or leaseholds, does not exceed 10 per cent of the book value of the net assets of the trust, and

(iv) the total of the investments of the trust in real estate or leaseholds, other than for the production of income, does not exceed 10 per cent of the book value of the net assets of the trust.

(3) The aggregate of

(*a*) the book value of the units of a real estate investment trust held by or on behalf of a plan, and

(*b*) the total amount of the indebtedness of that real estate investment trust to the plan

shall not at any time exceed 10 per cent of the total book value of the assets of the plan.

13. Additional securities of any nature to further secure the repayment of any investment of loan, or to further secure the sufficiency of any of the securities in or on which the funds of a plan are authorized to be invested or loaned, may be accepted by or on behalf of a plan.

14. The funds of a plan shall not be loaned to

(*a*) the spouse or a child of the employer or, where the employer is a corporation, a director or officer of the employer, or the spouse or a child of a director or officer;

(*b*) an employee of the employer or the spouse or a child of that employee, except on the security of a mortgage on residential property owned by the employee, spouse or child primarily for the use of the employee, spouse or child, as the case may be;

(*c*) the administrator of a plan or an association or union representing employees of the employer, or an officer or employee of the administrator, association or union, or the spouse or a child of such an administrator, officer or employee; or

(*d*) a corporation of which more than one half of the shares of the capital stock are

(i) owned by the spouse or the child of the employer or by both the spouse and the child of the employer, or

(ii) where the employer is a corporation, by a director or officer of the employer, or the spouse or a child of a director or officer of the employer, or by any combination of those persons.